

LEGISLATIVE BILL 1199

Approved by the Governor April 13, 2006

Introduced by Bourne, 8; Aguilar, 35; Combs, 32; Connealy, 16; Erdman, 47; Flood, 19; Foley, 29; Friend, 10; Howard, 9; Dw. Pedersen, 39; Stuthman, 22; Synowiecki, 7; at the request of the Governor

AN ACT relating to sex offenses; to amend sections 28-319, 29-2028, 29-2221, 42-1203, 71-1,206.14, 71-1,206.18, 71-1,206.34, 71-6908, 79-267, 83-1,100, and 83-1,103, Reissue Revised Statutes of Nebraska, sections 28-101, 28-111, 28-311, 28-318, 28-320.01, 28-320.02, 28-707, 29-119, 29-1926, 29-2290, 29-2923, 29-4001, 29-4005, 29-4006, 29-4007, 29-4011, 29-4103, 71-916, 71-917, 71-918, 71-919, 71-942, 71-944, 71-945, 71-946, 71-947, 71-948, 71-949, 71-954, 71-956, 71-957, 71-958, 71-959, 71-960, 71-961, 71-962, 80-601, 81-1850, 83-338, 83-351, 83-364, 83-376, and 83-933, Revised Statutes Cumulative Supplement, 2004, and sections 29-110, 29-4003, 29-4004, 29-4009, 29-4013, 71-1128, 83-1,102, 83-1,135, and 83-4,143, Revised Statutes Supplement, 2005; to create the offenses of sexual assault of a child in the first, second, and third degrees; to provide penalties; to change provisions relating to sex offenses and the Sex Offender Registration Act; to adopt the Sexual Predator Residency Restriction Act and the Sex Offender Commitment Act; to provide duties for authorities with respect to the release of certain sex offenders; to provide for lifetime community supervision of certain sex offenders as prescribed; to provide duties for the Office of Parole Administration and parole officers; to change provisions relating to the Nebraska Treatment and Corrections Act; to provide duties for sentencing courts; to establish a working group; to provide a termination date; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-101, Revised Statutes Cumulative Supplement, 2004, is amended to read:

28-101 Sections 28-101 to 28-1350 and section 6 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. Section 28-111, Revised Statutes Cumulative Supplement, 2004, is amended to read:

28-111 Any person who commits one or more of the following criminal offenses against a person or a person's property because of the person's race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of the person's association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability shall be punished by the imposition of the next higher penalty classification than the penalty classification prescribed for the criminal offense, unless such criminal offense is already punishable as a Class IB felony or higher classification: Manslaughter, section 28-305; assault in the first degree, section 28-308; assault in the second degree, section 28-309; assault in the third degree, section 28-310; terroristic threats, section 28-311.01; stalking, section 28-311.03; kidnapping, section 28-313; false imprisonment in the first degree, section 28-314; false imprisonment in the second degree, section 28-315; sexual assault in the first degree, section 28-319; sexual assault in the second or third degree, section 28-320; sexual assault of a child, section 28-320.01 and section 6 of this act; arson in the first degree, section 28-502; arson in the second degree, section 28-503; arson in the third degree, section 28-504; criminal mischief, section 28-519; criminal trespass in the first degree, section 28-520; or criminal trespass in the second degree, section 28-521.

Sec. 3. Section 28-311, Revised Statutes Cumulative Supplement, 2004, is amended to read:

28-311 (1) No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice, or lure any child under the age of fourteen years to enter into any vehicle, whether or not the person knows the age of the child, if:

(a) The person does not have the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity; and

(b)(i) The person is not a law enforcement officer, emergency services provider as defined in section 71-507, firefighter, or other person who regularly provides emergency services, is not the operator of a bookmobile

or other such vehicle operated by the state or a political subdivision and used for informing, educating, organizing, or transporting children, is not a paid employee of, or a volunteer for, a nonprofit or religious organization which provides activities for children, and is not an employee or agent of or a volunteer acting under the direction of any board of education or (ii) the person is a person listed in subdivision (1)(b)(i) of this section but, at the time the person undertakes the activity, he or she is not acting within the scope of his or her lawful duties in that capacity.

(2) It is an affirmative defense to a charge under this section that the person undertook the activity in response to a bona fide emergency situation or that the person undertook the activity in response to a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.

(3) Any person who violates this section commits criminal child enticement and is guilty of a Class I misdemeanor. If such person has previously been convicted of (a) criminal child enticement under this section, (b) sexual assault of a child in the first degree under section 6 of this act, (c) sexual assault of a child in the second or third degree under section 28-320.01, or ~~(e)~~ (d) assault under section 28-308, 28-309, or 28-310, kidnapping under section 28-313, or false imprisonment under section 28-314 or 28-315 when the victim was under eighteen years of age when such person violates this section, such person is guilty of a Class IV felony.

Sec. 4. Section 28-318, Revised Statutes Cumulative Supplement, 2004, is amended to read:

28-318 As used in sections 28-317 to 28-321 and section 6 of this act, unless the context otherwise requires:

- (1) Actor means a person accused of sexual assault;
- (2) Intimate parts means the genital area, groin, inner thighs, buttocks, or breasts;
- (3) Past sexual behavior means sexual behavior other than the sexual behavior upon which the sexual assault is alleged;
- (4) Serious personal injury means great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;
- (5) Sexual contact means the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. Sexual contact shall also include the touching of a child with the actor's sexual or intimate parts on any part of the child's body for purposes of sexual assault of a child under section 28-320.01 and section 6 of this act;
- (6) Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen;
- (7) Victim means the person alleging to have been sexually assaulted;
- (8) Without consent means:
 - (a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;
 - (b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and
 - (c) A victim need not resist verbally or physically where it would be useless or futile to do so; and
- (9) Force or threat of force means (a) the use of physical force which overcomes the victim's resistance or (b) the threat of physical force, express or implied, against the victim or a third person that places the victim in fear of death or in fear of serious personal injury to the victim or a third person where the victim reasonably believes that the actor has the present or future ability to execute the threat.

Sec. 5. Section 28-319, Reissue Revised Statutes of Nebraska, is amended to read:

28-319 (1) Any person who subjects another person to sexual penetration (a) without the consent of the victim, ~~or~~ (b) who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct, or (c) when the actor is nineteen years of age or older and the victim is at least twelve but less than sixteen years of age is guilty of sexual assault in the first degree.

(2) Sexual assault in the first degree is a Class II felony. The sentencing judge shall consider whether the actor caused serious personal injury to the victim in reaching a decision on the sentence.

(3) Any person who is found guilty of sexual assault in the first degree for a second time when the first conviction was pursuant to this section or any other state or federal law with essentially the same elements as this section shall be sentenced to ~~not less than~~ a mandatory minimum term of twenty-five years and shall not be eligible for parole in prison.

Sec. 6. (1) A person commits sexual assault of a child in the first degree if he or she subjects another person under twelve years of age to sexual penetration and the actor is at least nineteen years of age or older.

(2) Sexual assault of a child in the first degree is a Class IB felony with a mandatory minimum sentence of fifteen years in prison for the first offense.

(3) Any person who is found guilty of sexual assault of a child in the first degree under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-320.01 before the effective date of this act of sexual assault of a child or attempted sexual assault of a child, (d) under section 28-320.01 on or after the effective date of this act of sexual assault of a child in the second or third degree or attempted sexual assault of a child in the second or third degree, or (e) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or section 28-320.01 as it existed before, on, or after the effective date of this act shall be guilty of a Class IB felony with a mandatory minimum sentence of twenty-five years in prison.

Sec. 7. Section 28-320.01, Revised Statutes Cumulative Supplement, 2004, is amended to read:

28-320.01 (1) A person commits sexual assault of a child in the second or third degree if he or she subjects another person fourteen years of age or younger to sexual contact and the actor is at least nineteen years of age or older.

(2) Sexual assault of a child is in the second degree if the actor causes serious personal injury to the victim. Sexual assault of a child in the second degree is a Class II felony for the first offense.

(3) Sexual assault of a child is in the third degree if the actor does not cause serious personal injury to the victim. Sexual assault of a child in the third degree is a Class IIIA felony for the first offense.

~~(3)~~ (4) Any person who is found guilty of second degree sexual assault of a child under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, ~~or~~ (c) under section 6 of this act for first degree or attempted first degree sexual assault of a child, or (d) in any other state or federal court under laws with essentially the same elements as this section, ~~or~~ section 28-319, or section 6 of this act shall be guilty of a Class IC felony and shall be sentenced to a mandatory minimum term of twenty-five years in prison.

(5) Any person who is found guilty of third degree sexual assault of a child under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 6 of this act for first degree or attempted first degree sexual assault of a child, or (d) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or section 6 of this act shall be guilty of a Class IC felony.

Sec. 8. Section 28-320.02, Revised Statutes Cumulative Supplement, 2004, is amended to read:

28-320.02 (1) No person shall knowingly solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of a computer as that term is defined in section 28-1343, to engage in an act which would be in violation of section 28-319 or 28-320.01 or section 6 of this act or subsection (1) or (2) of section 28-320. A person shall not be convicted of both a violation of this subsection and a violation of section

28-319 or ~~section~~ 28-320.01 or section 6 of this act or subsection (1) or (2) of section 28-320 if the violations arise out of the same set of facts or pattern of conduct and the individual solicited, coaxed, enticed, or lured under this subsection is also the victim of the sexual assault under section 28-319 or ~~section~~ 28-320.01 or section 6 of this act or subsection (1) or (2) of section 28-320.

(2) A person who violates this section is guilty of a Class IIIA felony. If a person who violates this section has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, or 28-320.01 or section 6 of this act or subsection (1) or (2) of section 28-320, the person is guilty of a Class III felony.

Sec. 9. Section 28-707, Revised Statutes Cumulative Supplement, 2004, is amended to read:

28-707 (1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

(a) Placed in a situation that endangers his or her life or physical or mental health;

(b) Cruelly confined or cruelly punished;

(c) Deprived of necessary food, clothing, shelter, or care;

(d) Placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions; or

(e) Placed in a situation to be sexually abused as defined in section 28-319 or 28-320.01 or section 6 of this act.

(2) The statutory privilege between patient and physician, between client and professional counselor, and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109.

(5) Child abuse is a Class III felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(6) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

Sec. 10. Section 29-110, Revised Statutes Supplement, 2005, is amended to read:

29-110 (1) Except as otherwise provided by law, no person shall be prosecuted for any felony unless the indictment is found by a grand jury within three years next after the offense has been done or committed or unless a complaint for the same is filed before the magistrate within three years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(2) Except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any misdemeanor or other indictable offense below the grade of felony or for any fine or forfeiture under any penal statute unless the suit, information, or indictment for such offense is instituted or found within one year and six months from the time of committing the offense or incurring the fine or forfeiture or within one year for any offense the punishment of which is restricted by a fine not exceeding one hundred dollars and to imprisonment not exceeding three months.

(3) Except as otherwise provided by law, no person shall be prosecuted for kidnapping under section 28-313, false imprisonment under section 28-314 or 28-315, child abuse under section 28-707, pandering under section 28-802, debauching a minor under section 28-805, or an offense under section 28-813, 28-813.01, or 28-1463.03 when the victim is under sixteen years of age at the time of the offense (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(4) No person shall be prosecuted for a violation of the Securities Act of Nebraska under section 8-1117 unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the

magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(5) There shall not be any time limitations for prosecution or punishment for treason, murder, arson, forgery, sexual assault in the first or second degree under section 28-319 or 28-320, ~~or~~ sexual assault of a child in the second or third degree under section 28-320.01, or sexual assault of a child in the first degree under section 6 of this act; nor shall there be any time limitations for prosecution or punishment for sexual assault in the third degree under section 28-320 when the victim is under sixteen years of age at the time of the offense.

(6) The time limitations prescribed in this section shall include all inchoate offenses pursuant to the Nebraska Criminal Code and compounding a felony pursuant to section 28-301.

(7) The time limitations prescribed in this section shall not extend to any person fleeing from justice.

(8) When any suit, information, or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within any other time than is limited by this section, then the suit, information, or indictment shall be brought or exhibited within the time limited by such statute.

(9) If any suit, information, or indictment is quashed or the proceedings set aside or reversed on writ of error, the time during the pendency of such suit, information, or indictment so quashed, set aside, or reversed shall not be reckoned within this statute so as to bar any new suit, information, or indictment for the same offense.

(10) The changes made to this section by Laws 2004, LB 943, shall apply to offenses committed prior to April 16, 2004, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(11) The changes made to this section by Laws 2005, LB 713, shall apply to offenses committed prior to September 4, 2005, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

Sec. 11. Section 29-119, Revised Statutes Cumulative Supplement, 2004, is amended to read:

29-119 For purposes of this section and sections 23-1201, 29-120, and 29-2261, unless the context otherwise requires:

(1) A plea agreement means that as a result of a discussion between the defense counsel and the prosecuting attorney:

(a) A charge is to be dismissed or reduced; or

(b) A defendant, if he or she pleads guilty to a charge, may receive less than the maximum penalty permitted by law; and

(2) Victim means a person who, as a result of a homicide as defined in sections 28-302 to 28-306, a first degree sexual assault as defined in section 28-319, a first degree assault as defined in section 28-308, a sexual assault of a child in the second or third degree as defined in section 28-320.01, a sexual assault of a child in the first degree as defined in section 6 of this act, a second degree assault as defined in section 28-309, a first degree false imprisonment as defined in section 28-314, a second degree sexual assault as defined in section 28-320, or a robbery as defined in section 28-324, has had a personal confrontation with the offender and also includes a person who has suffered serious bodily injury as defined in section 28-109 as a result of a motor vehicle accident when the driver was charged with a violation of section 60-6,196 or 60-6,197 or with a violation of a city or village ordinance enacted in conformance with either section. In the case of a homicide, victim means the nearest surviving relative under the law as provided by section 30-2303 but does not include the alleged perpetrator of the homicide. In the case of a sexual assault of a child, victim means the child victim and the parents, guardians, or duly appointed legal representative of the child victim but does not include the alleged perpetrator of the sexual assault.

Sec. 12. Section 29-1926, Revised Statutes Cumulative Supplement, 2004, is amended to read:

29-1926 (1)(a) Upon request of the prosecuting or defense attorney and upon a showing of compelling need, the court shall order the taking of a videotape deposition of a child victim of or child witness to any offense punishable as a felony. The deposition ordinarily shall be in lieu of courtroom or in camera testimony by the child. If the court orders a videotape deposition, the court shall:

(i) Designate the time and place for taking the deposition. The deposition may be conducted in the courtroom, the judge's chambers, or any other location suitable for videotaping;

(ii) Assure adequate time for the defense attorney to complete discovery before taking the deposition; and

(iii) Preside over the taking of the videotape deposition in the same manner as if the child were called as a witness for the prosecution during the course of the trial.

(b) Unless otherwise required by the court, the deposition shall be conducted in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court, including the parent or guardian of the child victim or child witness or a counselor or other person with whom the child is familiar. Such parent, guardian, counselor, or other person shall be allowed to sit with or near the child unless the court determines that such person would be disruptive to the child's testimony.

(c) At any time subsequent to the taking of the original videotape deposition and upon sufficient cause shown, the court shall order the taking of additional videotape depositions to be admitted at the time of the trial.

(d) If the child testifies at trial in person rather than by videotape deposition, the taking of the child's testimony may, upon request of the prosecuting attorney and upon a showing of compelling need, be conducted in camera.

(e) Unless otherwise required by the court, the child shall testify in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court, including the parent or guardian of the child victim or child witness or a counselor or other person with whom the child is familiar. Such parent, guardian, counselor, or other person shall be allowed to sit with or near the child unless the court determines that such person would be disruptive to the child's testimony. Unless waived by the defendant, all persons in the room shall be visible on camera except the camera operator.

(f) If deemed necessary to preserve the constitutionality of the child's testimony, the court may direct that during the testimony the child shall at all times be in a position to see the defendant live or on camera.

(g) For purposes of this section, child shall mean a person eleven years of age or younger at the time the motion to take the deposition is made or at the time of the taking of in camera testimony at trial.

(h) Nothing in this section shall restrict the court from conducting the pretrial deposition or in camera proceedings in any manner deemed likely to facilitate and preserve a child's testimony to the fullest extent possible, consistent with the right to confrontation guaranteed in the Sixth Amendment of the Constitution of the United States and Article I, section 11, of the Nebraska Constitution. In deciding whether there is a compelling need that child testimony accommodation is required by pretrial videotape deposition, in camera live testimony, in camera videotape testimony, or any other accommodation, the court shall make particularized findings on the record of:

(i) The nature of the offense;

(ii) The significance of the child's testimony to the case;

(iii) The likelihood of obtaining the child's testimony without modification of trial procedure or with a different modification involving less substantial digression from trial procedure than the modification under consideration;

(iv) The child's age;

(v) The child's psychological maturity and understanding; and

(vi) The nature, degree, and duration of potential injury to the child from testifying.

(i) The court may order an independent examination by a psychologist or psychiatrist if the defense attorney requests the opportunity to rebut the showing of compelling need produced by the prosecuting attorney. Such examination shall be conducted in the child's county of residence.

(j) After a finding of compelling need by the court, neither party may call the child witness to testify as a live witness at the trial before the jury unless that party demonstrates that the compelling need no longer exists.

(k) Nothing in this section shall limit the right of access of the media or the public to open court.

(l) Nothing in this section shall preclude discovery by the defendant as set forth in section 29-1912.

(m) The Supreme Court may adopt and promulgate rules of procedure to administer this section, which rules shall not be in conflict with laws governing such matters.

(2)(a) No custodian of a videotape of a child victim or child witness alleging, explaining, denying, or describing an act of sexual assault pursuant to section 28-319 or 28-320.01 or section 6 of this act or child

abuse pursuant to section 28-707 as part of an investigation or evaluation of the abuse or assault shall release or use a videotape or copies of a videotape or consent, by commission or omission, to the release or use of a videotape or copies of a videotape to or by any other party without a court order, notwithstanding the fact that the child victim or child witness has consented to the release or use of the videotape or that the release or use is authorized under law, except as provided in section 28-730. Any custodian may release or consent to the release or use of a videotape or copies of a videotape to law enforcement agencies or agencies authorized to prosecute such abuse or assault cases on behalf of the state.

(b) The court order may govern the purposes for which the videotape may be used, the reproduction of the videotape, the release of the videotape to other persons, the retention and return of copies of the videotape, and any other requirements reasonably necessary for the protection of the privacy and best interests of the child victim or child witness.

(c) Pursuant to section 29-1912, the defendant described in the videotape may petition the district court in the county where the alleged offense took place or where the custodian of the videotape resides for an order releasing to the defendant a copy of the videotape.

(d) Any person who releases or uses a videotape except as provided in this section shall be guilty of a Class I misdemeanor.

Sec. 13. Section 29-2028, Reissue Revised Statutes of Nebraska, is amended to read:

29-2028 The testimony of a person who is a victim of a sexual assault as defined in sections 28-319 to 28-320.01 and section 6 of this act shall not require corroboration.

Sec. 14. Section 29-2221, Reissue Revised Statutes of Nebraska, is amended to read:

29-2221 (1) Whoever has been twice convicted of a crime, sentenced, and committed to prison, in this or any other state or by the United States or once in this state and once at least in any other state or by the United States, for terms of not less than one year each shall, upon conviction of a felony committed in this state, be deemed to be a habitual criminal and shall be punished by imprisonment in a Department of Correctional Services adult correctional facility for a mandatory minimum term of ten years and a maximum term of not more than sixty years, except that:

(a) If the felony committed is in violation of section 28-303, 28-304, 28-308, 28-313, 28-319, 28-502, 28-929, or 28-1222 or section 6 of this act, and at least one of the habitual criminal's prior felony convictions was for a violation of one of the sections listed in this subdivision or of a similar statute in another state or of the United States, the mandatory minimum term shall be twenty-five years and the maximum term not more than sixty years;

(b) If the felony committed is in violation of subsection (3) of section 28-306 and at least one of the prior convictions is in violation of subsection (3) of section 28-306 and the other is in violation of one of the sections set forth in subdivision (a) of this subsection or if the felony committed is in violation of one of the sections set forth in subdivision (a) of this subsection and both of the prior convictions are in violation of subsection (3) of section 28-306, the mandatory minimum term shall be twenty-five years and the maximum term not more than sixty years; and

(c) If a greater punishment is otherwise provided by statute, the law creating the greater punishment shall govern.

(2) When punishment of an accused as a habitual criminal is sought, the facts with reference thereto shall be charged in the indictment or information which contains the charge of the felony upon which the accused is prosecuted, but the fact that the accused is charged with being a habitual criminal shall not be an issue upon the trial of the felony charge and shall not in any manner be disclosed to the jury. If the accused is convicted of a felony, before sentence is imposed a hearing shall be had before the court alone as to whether such person has been previously convicted of prior felonies. The court shall fix a time for the hearing and notice thereof shall be given to the accused at least three days prior thereto. At the hearing, if the court finds from the evidence submitted that the accused has been convicted two or more times of felonies and sentences imposed therefor by the courts of this or any other state or by the United States, the court shall sentence such person so convicted as a habitual criminal.

(3) If the person so convicted shows to the satisfaction of the court before which the conviction was had that he or she was released from imprisonment upon either of such sentences upon a pardon granted for the reason that he or she was innocent, such conviction and sentence shall not be considered as such under this section and section 29-2222.

Sec. 15. Section 29-2290, Revised Statutes Cumulative Supplement, 2004, is amended to read:

29-2290 (1) Notwithstanding any other provision of law, when a person has been convicted of sexual assault pursuant to sections 28-317 to 28-320, sexual assault of a child in the second or third degree pursuant to section 28-320.01, sexual assault of a child in the first degree pursuant to section 6 of this act, or any other offense under Nebraska law when sexual contact or sexual penetration is an element of the offense, the presiding judge shall, at the request of the victim as part of the sentence of the convicted person when the circumstances of the case demonstrate a possibility of transmission of the human immunodeficiency virus, order the convicted person to submit to a human immunodeficiency virus antibody or antigen test. Such test shall be conducted under the jurisdiction of the Department of Correctional Services. The Department of Correctional Services shall make the results of the test available only to the victim, to the parents or guardian of the victim if the victim is a minor or is mentally incompetent, to the convicted person, to the parents or guardian of the convicted person if the convicted person is a minor or mentally incompetent, to the court issuing the order for testing, and to the Department of Health and Human Services.

(2) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Department of Correctional Services shall provide counseling to the convicted person regarding human immunodeficiency virus disease and referral to appropriate health care and support services.

(3) The Department of Correctional Services shall provide to the Department of Health and Human Services the result of any human immunodeficiency virus test conducted pursuant to this section and information regarding the request of the victim. The Department of Health and Human Services shall notify the victim or the parents or guardian of the victim if the victim is a minor or mentally incompetent and shall make available to the victim counseling and testing regarding human immunodeficiency virus disease and referral to appropriate health care and support services.

(4) The cost of testing under this section shall be paid by the convicted person tested unless the court has determined the convicted person to be indigent.

(5) Filing of a notice of appeal shall not automatically stay an order that the convicted person submit to a human immunodeficiency virus test.

(6) For purposes of this section:

- (a) Convicted shall include adjudicated under juvenile proceedings;
- (b) Convicted person shall include a child adjudicated of an offense described in subsection (1) of this section; and
- (c) Sentence shall include a disposition under juvenile proceedings.

(7) The Department of Correctional Services, in consultation with the Department of Health and Human Services, shall adopt and promulgate rules and regulations to carry out this section.

Sec. 16. Section 29-2923, Revised Statutes Cumulative Supplement, 2004, is amended to read:

29-2923 For purposes of the Convicted Sex Offender Act:

(1) Aftercare treatment program shall mean any public or private facility or service which offers treatment on an outpatient basis or in a minimally restricted setting, which treatment is appropriate for a convicted sex offender after he or she has successfully completed an inpatient treatment program operated by the Department of Health and Human Services; and

(2) Convicted sex offender shall mean a person who is convicted of sexual assault in the first degree as provided in section 28-319, sexual assault in the second degree as provided in section 28-320, sexual assault of a child in the second or third degree as provided in section 28-320.01, sexual assault of a child in the first degree as provided in section 6 of this act, incest as provided in section 28-703, or attempt to commit sexual assault in the first degree pursuant to section 28-201 and sentenced to a term of imprisonment in a Department of Correctional Services adult correctional facility.

Sec. 17. Section 29-4001, Revised Statutes Cumulative Supplement, 2004, is amended to read:

29-4001 Sections 29-4001 to 29-4013 and section 26 of this act shall be known and may be cited as the Sex Offender Registration Act.

Sec. 18. Section 29-4003, Revised Statutes Supplement, 2005, is amended to read:

29-4003 (1) Except as provided in subsection (2) of this section, the Sex Offender Registration Act shall apply to any person who on or after January 1, 1997:

- (a) Pleads guilty to or is found guilty of:

(i) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense in this section;

(ii) False imprisonment of a minor pursuant to section 28-314 or 28-315;

(iii) Sexual assault pursuant to section 28-319 or 28-320;

(iv) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(v) Sexual assault of a child in the first degree pursuant to section 6 of this act;

~~(v)~~ (vi) Sexual assault of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386;

~~(vi)~~ (vii) Incest of a minor pursuant to section 28-703;

~~(vii)~~ (viii) Pandering of a minor pursuant to section 28-802;

~~(viii)~~ (ix) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;

~~(ix)~~ (x) Knowingly possessing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers pursuant to section 28-813.01;

~~(x)~~ (xi) Criminal child enticement pursuant to section 28-311;

~~(xi)~~ (xii) Child enticement by means of a computer pursuant to section 28-320.02; ~~or~~

~~(xii)~~ (xiii) Debauching a minor pursuant to section 28-805; or

(xiv) Attempt, solicitation, or conspiracy to commit an offense listed in subdivisions (1)(a)(i) through ~~(1)(a)(xi)~~ (1)(a)(xiii) of this section;

(b) Enters the state and has pleaded guilty to or has been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(a) of this section by any state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, or by court-martial or other military tribunal, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon; ~~or~~

(c) Is incarcerated in a jail, a penal or correctional facility, or any other public or private institution or is under probation or parole as a result of pleading guilty to or being found guilty of a registrable offense under subdivision (1)(a) or (b) of this section prior to January 1, 1997; or

(d) Enters the state and is required to register as a sex offender under the laws of another state, territory, commonwealth, or other jurisdiction of the United States.

(2) In the case of a person convicted of a violation of section ~~28-311, 28-313, 28-314, or 28-315,~~ or 28-805, the convicted person shall be subject to the Sex Offender Registration Act, unless the sentencing court determines at the time of sentencing, in light of all the facts, that the convicted person is not subject to the act. The sentencing court shall make such determination part of the sentencing order.

(3) A person appealing a conviction of a registrable offense under this section shall be required to comply with the act during the appeals process.

Sec. 19. Section 29-4004, Revised Statutes Supplement, 2005, is amended to read:

29-4004 (1) Any person subject to the Sex Offender Registration Act shall register with the sheriff of the county in which the person resides or is temporarily domiciled within five working days of becoming subject to the act.

(2) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in writing, if he or she has a new address within such county within five working days after the address change. The sheriff shall forward such information to the sex offender registration and community notification division of the Nebraska State Patrol within five working days after receipt of the new address.

(3) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in writing, if he or she has a new address in a different county in this state within five working days after the address change. The sheriff shall forward the new address to the sex offender registration and community notification division of the Nebraska State Patrol within five working days after receipt of the new address. The division shall notify the sheriff of the county to which the person is relocating of the new address. The person shall report to the county sheriff of his or her new county of residence and register with such county sheriff within five working days after the address change.

(4) Any person required to register under the act shall inform the

sheriff of the county in which he or she resides, in writing, if he or she moves to a new out-of-state address within five working days after the address change. The sheriff shall forward the new out-of-state address to the sex offender registration and notification division of the Nebraska State Patrol within five working days after receipt of the new out-of-state address. The division shall forward the new out-of-state address to the other state's central repository for sex offender registration.

(5) Any person required to register under the act who is residing in another state or is temporarily domiciled in another state, and is employed, carries on a vocation, or attends school in this state shall report and register with the sheriff of the county in which he or she is employed, carries on a vocation, or attends school in this state within five working days after becoming employed, carrying on a vocation, or attending school. The person shall also notify the sheriff of any changes in employment, vocation, or school of attendance, in writing, within five working days after the change. The sheriff shall forward this information to the sex offender registration and community notification division of the Nebraska State Patrol within five working days after receipt of such information. For purposes of this subsection:

(a) Attends school means enrollment in any educational institution in this state on a full-time or part-time basis;

(b) Is employed or carries on a vocation means any full-time or part-time employment, with or without compensation, which lasts for a duration of more than fourteen days or for an aggregate period exceeding thirty days in a calendar year; and

(c) Temporarily domiciled means a place at which the person actually lives or stays on a temporary basis even though he or she may plan to return to his or her permanent address or to another temporary address. For purposes of this section, a temporary domicile means any place at which the person actually lives or stays for a period of at least five working days.

(6) Any person incarcerated for a registrable offense under section 29-4003 in a jail, penal or correctional facility, or other public or private institution who is not already registered shall be registered by the jail, penal or correctional facility, or public or private institution prior to his or her discharge, parole, furlough, work release, or release. The person shall be informed and information shall be obtained as required in section 29-4006.

(7) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in writing, of each postsecondary educational institution at which he or she is employed, carries on a vocation, or attends school, within five working days after such employment or attendance. The person shall also notify the sheriff of any change in such employment or attendance status at the postsecondary educational institution, in writing, within five working days after such change. The sheriff shall forward the information regarding such employment or attendance to the sex offender registration and community notification division of the Nebraska State Patrol within five working days after receipt of the information.

(8) Any person required to register or who is registered under the act, but is incarcerated for more than five days, whether or not in his or her own county of residence or temporary domicile, shall inform the sheriff of the county in which such person would reside or would be temporarily domiciled if he or she was not incarcerated, within five working days after incarceration, of his or her incarceration and his or her expected release date, if any such date is available. The sheriff shall forward the information regarding incarceration to the sex offender registration and community notification division of the Nebraska State Patrol within five working days after receipt of the information.

(9) Any person required to register or who is registered under the act who no longer has a residence or temporary domicile shall notify the county sheriff in which he or she is located, in writing, within five working days after such change in residence or temporary domicile. Such person shall update his or her registration, in writing, on a form approved by the sex offender registration and community notification division of the Nebraska State Patrol at least once every thirty calendar days during the time he or she remains without residence or temporary domicile.

(10) Each sheriff registering entity shall forward all written information, photographs, and fingerprints obtained pursuant to the act to the sex offender registration and community notification division of the Nebraska State Patrol within five working days. The information shall be forwarded on forms furnished by the division. The division shall maintain a central registry of sex offenders required to register under the act.

Sec. 20. Section 29-4005, Revised Statutes Cumulative Supplement,

2004, is amended to read:

29-4005 (1) Except as provided in subsections (2) and (3) of this section, any person to whom the Sex Offender Registration Act applies shall be required to register during any period of supervised release, probation, or parole and shall continue to comply with the act for a period of ten years after the date of discharge from probation, parole, or supervised release or release from incarceration, whichever date is most recent. The ten-year registration requirement shall not apply to any person while he or she is incarcerated in a jail, a penal or correctional facility, or any other public or private institution. The ten-year registration requirement does not include any time period when any person who is required to register under the act knowingly or willfully fails to comply with such registration requirement.

(2) A person ~~sentenced for a registrable offense~~ required to register under section 29-4003 shall be required to register under the act for the rest of his or her life if ~~such registrable~~ the offense creating the obligation to register is an aggravated offense, ~~or if the person has a prior conviction for a registrable offense, or if the person is required to register as a sex offender for the rest of his or her life under the laws of another state, territory, commonwealth, or other jurisdiction of the United States.~~ The A sentencing court shall make that fact part of the sentencing order.

(3) (a) When sentencing a person for a registrable offense under section 29-4003, a court may also determine if the person is a sexually violent predator. When making its determination the court shall consider information contained in the presentence report and the recommendation of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies.

(b) In addition to complying with the annual verification requirements in section 29-4006 and the lifetime registration requirements of subsection (2) of this section, a person determined to be a sexually violent predator shall verify the registration information quarterly after the initial registration date.

(4) For purposes of this section:

(a) Aggravated offense means any registrable offense under section 29-4003 which involves the penetration of (i) a victim age twelve years or more through the use of force or the threat of serious violence or (ii) a victim under the age of twelve years;

(b) Mental abnormality means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of a criminal sexual act to a degree that makes the person a menace to the health and safety of other persons; and

(c) Sexually violent predator means a person who has been convicted of one or more registrable offenses under section 29-4003 and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at a stranger, or at a person with whom a relationship has been established or promoted, for the primary purpose of victimization.

Sec. 21. Section 29-4006, Revised Statutes Cumulative Supplement, 2004, is amended to read:

29-4006 (1) Registration information required by the Sex Offender Registration Act shall be in a form approved by the sex offender registration and community notification division of the Nebraska State Patrol and shall include the following information:

(a) The legal name and all aliases which the person has used or under which the person has been known;

(b) A complete description of the person, including date of birth, social security number, photographs, and fingerprints;

(c) A listing of each registrable offense under section 29-4003 to which the person pleaded guilty or was found guilty, the jurisdiction where each offense was committed, the court in which the person pleaded guilty or was found guilty of each offense, and the name under which the person pleaded guilty or was found guilty of each offense;

(d) The name and location of each jail, penal or correctional facility, or public or private institution to which the person was incarcerated for each offense and the actual time served or confined; and

(e) The address of the person's current residence and place of employment or vocation and any school he or she is attending.

(2) For the duration of the registration period required by the act, registration information shall be verified annually within thirty days after the anniversary date of the person's initial registration date. To properly verify, the following shall occur:

(a) The sex offender registration and community notification

division of the Nebraska State Patrol shall mail a nonforwardable verification form to the last-reported address of the person;

(b) The verification form shall be signed by the person and state whether the address last reported to the division is still correct; and

(c) The person shall mail the verification form to the division within ten days after receipt of the form.

(3) If the person fails to complete and mail the verification form to the sex offender registration and community notification division of the Nebraska State Patrol within ten days after receipt of the form, or the form cannot be delivered due to the registrant not being at the address last reported, the person shall be in violation of this section unless the person proves that the address last reported to the division is still correct.

(4) If the person falsifies the registration or verification form, the person shall be in violation of this section.

(5) The requirement to verify the address of a sexually violent predator quarterly as provided in section 29-4005 and the requirement to verify the address of any other registrant annually as required in this section shall not apply during periods of such registrant's incarceration. Address verification shall be resumed as soon as such incarcerated person is placed on any type of supervised release, parole, or probation or is released from incarceration. Prior to any type of release from incarceration, such person shall report the change of address to the sheriff of the county in which he or she is incarcerated and the sheriff of the county in which he or she resides or is temporarily domiciled. The sheriff shall forward the change of address to the sex offender registration and community notification division of the Nebraska State Patrol.

(6) Any person required to register under the Sex Offender Registration Act shall inform the sheriff of any legal change in name, in writing, within five working days after such change, and provide a copy of the legal documentation supporting the change in name. The sheriff shall forward the information to the sex offender registration and community notification division of the Nebraska State Patrol, in writing, within five working days after receipt of the information.

Sec. 22. Section 29-4007, Revised Statutes Cumulative Supplement, 2004, is amended to read:

29-4007 (1) When sentencing a person convicted of a registrable offense under section 29-4003, the court shall:

(a) Provide written notification of the duty to register under the Sex Offender Registration Act at the time of sentencing to any defendant who has pleaded guilty or has been found guilty of a registrable offense under section 29-4003. The written notification shall:

(i) Inform the defendant that if he or she moves to another address within the same county or ceases to have a residence or temporary domicile, he or she must report all address changes, including not having a residence or temporary domicile, to the county sheriff in the county where he or she has been residing within five working days after his or her move;

(ii) Inform the defendant that if he or she moves to another county in the State of Nebraska, he or she must notify the county sheriff in the county where he or she had been last residing and the county sheriff in the county where he or she is living of his or her current address. The notice must be given within five working days after his or her move;

(iii) Inform the defendant that if he or she moves to another state, he or she must report the change of address to the county sheriff of the county where he or she has been residing and must comply with the registration requirements of the state to which he or she is moving. The notice must be given within five working days after his or her move;

(iv) Inform the defendant that he or she shall (A) inform the sheriff of the county in which he or she resides, in writing, of each postsecondary educational institution at which he or she is employed, carries on a vocation, or attends school, within five working days after such employment or attendance and (B) notify the sheriff of any change in such employment or attendance status of such person at such postsecondary educational institution; ~~and~~

(v) Inform the defendant that if he or she goes to another state to work or goes to another state as a student and still resides or is temporarily domiciled in this state, he or she must comply with the registration requirements of both states; and

(vi) Inform the defendant that fingerprints and a photograph will be obtained by any registering entity in order to comply with the registration requirements;

(b) Require the defendant to read and sign a form stating that the duty of the defendant to register under the Sex Offender Registration Act has

been explained;

(c) Retain a copy of the written notification signed by the defendant; and

(d) If the defendant is adjudicated a sexually violent predator, include the supporting reports and other information supporting this finding.

A copy of the signed, written notification and the journal entry of the court shall be provided to the county attorney, the defendant, the sex offender registration and community notification division of the Nebraska State Patrol, and the county sheriff of the county in which the defendant resides or is temporarily domiciled.

(2) When a person is convicted of a registrable offense under section 29-4003 and is not subject to immediate incarceration upon sentencing, prior to being released by the court, the sentencing court shall ensure that the defendant is registered by the sheriff of the county in which the defendant resides or is temporarily domiciled is convicted no later than the time of sentencing. The sheriff shall obtain full registration information and documents as required by section 29-4006, and forward the information and documents to the sex offender registration and notification division of the Nebraska State Patrol within five working days.

(3) (a) The Department of Correctional Services or a city or county correctional or jail facility shall provide written notification of the duty to register pursuant to the Sex Offender Registration Act to any person committed to its custody for a registrable offense under section 29-4003 prior to the person's release from incarceration. The written notification shall:

(i) Inform the person that if he or she moves to another address within the same county, he or she must report all address changes to the county sheriff in the county where he or she has been residing within five working days after his or her move;

(ii) Inform the person that if he or she moves to another county in the State of Nebraska, he or she must notify the county sheriff in the county where he or she had been last residing and the county sheriff in the county where he or she is living of his or her current address. The notice must be given within five working days after his or her move;

(iii) Inform the person that if he or she moves to another state, he or she must report the change of address to the county sheriff of the county where he or she has been residing and must comply with the registration requirements of the state to which he or she is moving. The notice must be given within five working days after his or her move;

(iv) Inform the person that he or she shall (A) inform the sheriff of the county in which he or she resides, in writing, of each postsecondary educational institution at which he or she is employed, carries on a vocation, or attends school, within five working days after such employment or attendance and (B) notify the sheriff of any change in such employment or attendance status of such person at such postsecondary educational institution; and

(v) Inform the person that if he or she goes to another state to work or goes to another state as a student and still resides or is temporarily domiciled in this state, he or she must comply with the registration requirements of both states; and

(vi) Inform the defendant that fingerprints and a photograph will be obtained by any registering entity in order to comply with the registration requirements.

(b) The Department of Correctional Services or a city or county correctional or jail facility shall:

(i) Require the person to read and sign the notification form stating that the duty to register under the Sex Offender Registration Act has been explained;

(ii) Retain a signed copy of the written notification to register; and

(iii) Provide a copy of the notification to register to the person, the sex offender registration and notification division of the Nebraska State Patrol, and the sheriff of the county in which the person will be residing upon release from the institution. If the person is going to reside outside of the State of Nebraska, then notification to the sheriff is not required.

(4) The Department of Motor Vehicles shall cause written notification of the duty to register to be provided on the applications for a motor vehicle operator's license and for a commercial driver's license.

(5) All written notification as provided in this section shall be on a form prepared by the Attorney General.

Sec. 23. Section 29-4009, Revised Statutes Supplement, 2005, is amended to read:

29-4009 Information obtained under the Sex Offender Registration Act

shall be confidential, except that:

(1) Information shall be disclosed to law enforcement agencies for law enforcement purposes;

(2) Information on persons subject to section 89 of this act shall be disclosed to the Office of Parole Administration;

(3) Information concerning a defendant who is registered and reports to be employed with, carrying on a vocation at, or attending a postsecondary educational institution, shall be disclosed to the law enforcement agency having responsibility for the campus where the institution is located. This notification shall go to the affected campus police, if any, and other law enforcement agency having jurisdiction in the area in which the institution is located;

~~(2)~~ (4) Information may be disclosed to governmental agencies conducting confidential background checks for employment, volunteer, licensure, or certification purposes;

~~(3)~~ (5) Information may be disclosed to health care providers who serve children or vulnerable adults for the purpose of conducting confidential background checks for employment;

~~(4)~~ (6) Information concerning the address or whereabouts of the person required to register may be disclosed to the victim or victims of such person; and

~~(5)~~ (7) The Nebraska State Patrol, any law enforcement agency, and any probation or parole officer may release relevant information that is necessary to protect the public concerning a specific person required to register, except that the identity of a victim of an offense that requires registration shall not be released.

The release of information authorized by this section shall conform with the rules and regulations adopted and promulgated by the Nebraska State Patrol pursuant to section 29-4013.

Sec. 24. Section 29-4011, Revised Statutes Cumulative Supplement, 2004, is amended to read:

29-4011 (1) Any person required to register under the Sex Offender Registration Act who violates the act is guilty of a Class IV felony unless the act which caused the person to be placed on the registry was a misdemeanor, in which case a violation of the Sex Offender Registration Act shall be a crime of the same class or within the same penalty range as the original act.

(2) Any person required to register under the Sex Offender Registration Act who violates the act and who has previously been convicted of a violation of the act is guilty of a Class III felony and shall be sentenced to a mandatory minimum term of at least one year in prison unless the act which caused the person to be placed on the registry was a misdemeanor, in which case the violation of the Sex Offender Registration Act shall be a Class IV felony.

Sec. 25. Section 29-4013, Revised Statutes Supplement, 2005, is amended to read:

29-4013 (1) The Nebraska State Patrol shall adopt and promulgate rules and regulations to carry out the registration provisions of the Sex Offender Registration Act.

(2)(a) The Nebraska State Patrol shall adopt and promulgate rules and regulations for the release of information pursuant to section 29-4009.

(b) The rules and regulations adopted by the Nebraska State Patrol shall identify and incorporate factors relevant to the sex offender's risk of recidivism. Factors relevant to the risk of recidivism include, but are not limited to:

(i) Conditions of release that minimize the risk of recidivism, including probation, parole, counseling, therapy, or treatment;

(ii) Physical conditions that minimize the risk of recidivism, including advanced age or debilitating illness; and

(iii) Any criminal history of the sex offender indicative of a high risk of recidivism, including:

(A) Whether the conduct of the sex offender was found to be characterized by repetitive and compulsive behavior;

(B) Whether the sex offender committed the sexual offense against a child;

(C) Whether the sexual offense involved the use of a weapon, violence, or infliction of serious bodily injury;

(D) The number, date, and nature of prior offenses;

(E) Whether psychological or psychiatric profiles indicate a risk of recidivism;

(F) The sex offender's response to treatment;

(G) Any recent threats by the sex offender against a person or

expressions of intent to commit additional crimes; and

(H) Behavior of the sex offender while confined.

(c) The procedures for release of information established by the Nebraska State Patrol shall provide for three levels of notification by the law enforcement agency in whose jurisdiction the sex offender is to be released depending on the risk of recidivism by the sex offender as follows:

(i) If the risk of recidivism is low, other law enforcement agencies ~~likely to encounter the sex offender~~ shall be notified;

(ii) If the risk of recidivism is moderate, in addition to the notice required by subdivision (i) of this subdivision, schools, day care centers, health care facilities providing services to children or vulnerable adults, and religious and youth organizations shall be notified; and

(iii) If the risk of recidivism is high, in addition to the notice required by subdivisions (i) and (ii) of this subdivision, the public shall be notified through means designed to reach members of the public, ~~likely to encounter the sex offender~~, which are limited to direct contact, news releases, ~~or~~ a method utilizing a telephone system, or the Internet. The Nebraska State Patrol shall provide notice of sex offenders with a high risk of recidivism to at least one legal newspaper published in and of general circulation in the county where the offender is registered or, if none is published in the county, in a legal newspaper of general circulation in such county. If any means of notification proposes a fee for usage, then nonprofit organizations holding a certificate of exemption under section 501(c) of the Internal Revenue Code shall not be charged.

(d) The Nebraska State Patrol shall establish procedures for the evaluation of the risk of recidivism and implementation of community notification that promote the uniform application of the notification rules and regulations required by this section.

(e) The Nebraska State Patrol or a designee shall assign a notification level, based upon the risk of recidivism, to all persons required to register under the act.

(f) Personnel and mental health professionals for the sex offender registration and community notification division of the Nebraska State Patrol shall have access to all documents that are generated by any governmental agency that may have bearing on sex offender risk assessment and community notification pursuant to this section. This may include, but is not limited to, law enforcement reports, presentence reports, criminal histories, or birth certificates. The division shall not be charged for access to documents under this subdivision. Access to such documents will ensure that a fair risk assessment is completed using the totality of all information available. For purposes of this subdivision, mental health professional means (i) a practicing physician licensed to practice medicine in this state under the provisions of section 71-102, (ii) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 71-1,206.14, or (iii) a practicing mental health professional licensed or certified in this state as provided in section 71-1,333.

(3) Nothing in subsection (2) of this section shall be construed to prevent law enforcement officers from providing community notification concerning any person who poses a danger under circumstances that are not provided for in the act.

Sec. 26. Any person convicted of a crime requiring registration as a sex offender pursuant to section 29-4003 and committed to the Department of Correctional Services shall attend appropriate sex offender treatment and counseling programming offered by the department. Refusal to participate in such programming shall not result in disciplinary action or a loss of good time credit on the part of the offender but shall require a civil commitment evaluation pursuant to section 88 of this act prior to the completion of his or her criminal sentence.

Sec. 27. Sections 27 to 29 of this act shall be known and may be cited as the Sexual Predator Residency Restriction Act.

Sec. 28. For purposes of the Sexual Predator Residency Restriction Act:

(1) Child care facility means a facility licensed pursuant to the Child Care Licensing Act;

(2) Political subdivision means a village, a city, a county, a school district, a public power district, or any other unit of local government;

(3) School means a public, private, denominational, or parochial school which meets the requirements for accreditation or approval prescribed in Chapter 79;

(4) Sex offender means an individual who has been convicted of a crime listed in section 29-4003 and who is required to register as a sex

offender pursuant to the Sex Offender Registration Act; and

(5) Sexual predator means an individual who is required to register under the Sex Offender Registration Act, who has a high risk of recidivism as determined by the Nebraska State Patrol under section 29-4013, and who has victimized a person eighteen years of age or younger.

Sec. 29. (1) A political subdivision may enact an ordinance, resolution, or other legal restriction prescribing where sex offenders may reside only if the restrictions are limited to sexual predators, extend no more than five hundred feet from a school or child care facility, and meet the requirements of subsection (2) of this section.

(2) An ordinance, resolution, or other legal restriction enacted by a political subdivision shall not apply to a sexual predator who:

(a) Resides within a prison or a correctional or treatment facility operated by the state or a political subdivision;

(b) Established a residence before July 1, 2006, and has not moved from that residence; or

(c) Established a residence after July 1, 2006, and the school or child care facility triggering the restriction was established after the initial date of the sexual predator's residence at that location.

(3) Any ordinance, resolution, or other legal restriction prescribing where sex offenders may reside which does not meet the requirements of this section is void, regardless of whether such ordinance, resolution, or legal restriction was adopted prior to, on, or after the effective date of this act.

Sec. 30. Section 29-4103, Revised Statutes Cumulative Supplement, 2004, is amended to read:

29-4103 For purposes of the DNA Detection of Sexual and Violent Offenders Act:

(1) Combined DNA Index System means the Federal Bureau of Investigation's national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories;

(2) DNA means deoxyribonucleic acid which is located in the cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification;

(3) DNA record means the DNA identification information stored in the State DNA Data Base or the Combined DNA Index System which is derived from DNA typing test results;

(4) DNA sample means a blood or tissue sample provided by any person with respect to offenses covered by the DNA Detection of Sexual and Violent Offenders Act for analysis or storage, or both;

(5) DNA typing tests means the laboratory procedures which evaluate the characteristics of a DNA sample which are of value in establishing the identity of an individual;

(6) Felony sex offense means a felony offense, or an attempt, conspiracy, or solicitation to commit a felony offense, under any of the following:

(a) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense in this subdivision;

(b) Incest of a minor pursuant to section 28-703;

(c) Sexual assault in the first or second degree pursuant to section 28-319 or 28-320;

(d) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(e) Sexual assault of a child in the first degree pursuant to section 6 of this act;

~~(f)~~ (f) Sexual assault of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386; and

~~(g)~~ (g) False imprisonment of a minor in the first degree pursuant to section 28-314, except when the person is the parent of the minor and was not convicted of any other offense in this subdivision;

(7) Law enforcement agency includes a police department, town marshal, county sheriff, and the Nebraska State Patrol;

(8) Other specified offense means an offense, or an attempt, conspiracy, or solicitation to commit an offense, under any of the following:

(a) Murder in the first degree pursuant to section 28-303;

(b) Murder in the second degree pursuant to section 28-304;

(c) Manslaughter pursuant to section 28-305; or

(d) Stalking pursuant to sections 28-311.02 to 28-311.05; and

(9) Released means any release, parole, furlough, work release, prerelease, or release in any other manner from a prison, jail, or any other

detention facility or institution.

Sec. 31. Section 42-1203, Reissue Revised Statutes of Nebraska, is amended to read:

42-1203 For purposes of the Address Confidentiality Act:

(1) Abuse means causing or attempting to cause physical harm, placing another person in fear of physical harm, or causing another person to engage involuntarily in sexual activity by force, threat of force, or duress, when committed by (a) a person against his or her spouse, (b) a person against his or her former spouse, (c) a person residing with the victim if such person and the victim are or were in a dating relationship, (d) a person who formerly resided with the victim if such person and the victim are or were in a dating relationship, (e) a person against a parent of his or her children, whether or not such person and the victim have been married or resided together at any time, (f) a person against a person with whom he or she is in a dating relationship, (g) a person against a person with whom he or she formerly was in a dating relationship, or (h) a person related to the victim by consanguinity or affinity;

(2) Address means a residential street address, school address, or work address of an individual as specified on the individual's application to be a program participant;

(3) Dating relationship means an intimate or sexual relationship;

(4) Program participant means a person certified as a program participant under section 42-1204;

(5) Sexual assault has the same meaning as in section 28-319, 28-320, 28-320.01, or 28-386 or section 6 of this act; and

(6) Stalking has the same meaning as in sections 28-311.02 to 28-311.05.

Sec. 32. Section 71-1,206.14, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,206.14 Unless otherwise expressly stated, references to licensed psychologists in the Nebraska Mental Health Commitment Act, in the Sex Offender Commitment Act, in sections 71-1,206.01 to 71-1,206.35, and in section 44-513 shall mean only psychologists licensed under section 71-1,206.15 or 71-1,206.17 or subdivisions (2) and (3) of section 71-1,206.18 and shall not mean persons holding a special license under subdivision (1) of section 71-1,206.18 or under section 71-1,206.19 or holding a provisional license under sections 71-1,206.32 to 71-1,206.35.

Any reference to a person certified to practice clinical psychology under the law in effect immediately prior to September 1, 1994, and any equivalent reference under the law of another jurisdiction, including, but not limited to, certified clinical psychologist, health care practitioner in psychology, or certified health care provider, shall be construed to refer to a psychologist licensed under the Uniform Licensing Law except for persons licensed under subdivision (1) of section 71-1,206.18 or under section 71-1,206.19 or holding a provisional license under sections 71-1,206.32 to 71-1,206.35.

Sec. 33. Section 71-1,206.18, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,206.18 Except as provided in this section, a person licensed as a psychologist under the law in effect immediately prior to September 1, 1994, but not certified in clinical psychology:

(1) Shall be issued a special license to practice psychology that continues existing requirements for supervision. Any psychological practice that involves the diagnosis and treatment of major mental and emotional disorders by a person holding a special license shall be done under the supervision of a licensed psychologist approved by the board in accordance with regulations developed by the board. A psychologist licensed under this subdivision shall not supervise mental health practitioners or independently evaluate persons under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act. Supervisory relationships shall be registered with the board by a notarized letter signed by both the supervisor and supervisee. The letter shall contain:

(a) A general description of the supervisee's practice and the plan of supervision;

(b) A statement by the supervisor that he or she has the necessary experience and training to supervise this area of practice; and

(c) A statement by the supervisor that he or she accepts the legal and professional responsibility for the supervisee's practice with individuals having major mental and emotional disorders.

Psychologists practicing with special licenses may continue to use the title licensed psychologist but shall disclose supervisory relationships to clients or patients for whom supervision is required and to third-party

payors when relevant. Psychologists who wish to continue supervisory relationships existing immediately prior to September 1, 1994, with qualified physicians may do so if a letter as described in this subdivision is received by the board within three months after such date;

(2) May apply for licensure before December 1, 1995, by demonstrating that he or she has rendered psychological diagnostic and treatment services as the major element of his or her employment in an educational, correctional, or health care setting for at least four years after licensure. A psychologist demonstrating such experience shall be deemed to have met equivalent requirements for licensure to those required by section 71-1,206.15 and shall be eligible for renewal of licensure in accordance with the Uniform Licensing Law. For purposes of this subdivision:

(a) Educational settings shall be those which are part of a university or state college and those regulated by the State Department of Education;

(b) Correctional settings shall be those under the jurisdiction of the Department of Correctional Services; and

(c) Health care settings shall be hospitals, skilled nursing facilities, clinics, and mental health centers licensed by the Department of Health and Human Services Regulation and Licensure and accredited by the Joint Commission on Hospital Accreditation, by the Commission on Accreditation of Rehabilitation Facilities, by the Department of Health and Human Services, or by a similar or an equivalent accrediting body as determined by the board.

The four-year period shall be continuous and represent four years of full-time employment or a combination of half-time and full-time employment that totals four years. For purposes of this subdivision, year shall mean a calendar year except for educational settings that may define the employment year in nine-month increments. In no case shall an applicant receive four years of credit for experience accrued in less than four calendar years; or

(3) May apply for licensure within three months of September 1, 1994, by demonstrating that he or she has been employed as full-time faculty in a program of graduate education in psychology approved by the American Psychological Association for a period not less than five years after licensure. A person demonstrating such employment shall be deemed to have met equivalent requirements for licensure under section 71-1,206.15 and shall be eligible for renewal of licensure in accordance with the Uniform Licensing Law.

A person licensed but not certified to practice clinical psychology under the law in effect immediately prior to September 1, 1994, who has failed the examination for clinical certification shall not be eligible to apply under subdivisions (2) and (3) of this section. The board may deny an application under such subdivisions if the applicant has had any action taken against him or her for violations of the laws licensing psychologists by the board or the boards of other jurisdictions. Such person shall be granted a special license under subdivision (1) of this section.

Sec. 34. Section 71-1,206.34, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,206.34 A psychologist practicing with a provisional license shall use the title Provisionally Licensed Psychologist. A provisionally licensed psychologist shall disclose supervisory relationships to clients or patients for whom supervision is required and to third parties when relevant. A provisionally licensed psychologist shall not supervise other mental health professionals or independently evaluate persons under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act.

Sec. 35. Section 71-916, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-916 (1) The Department of Health and Human Services shall provide appropriate training to members and alternate members of each mental health board and shall consult with consumer and family advocacy groups in the development and presentation of such training. Members and alternate members shall be reimbursed for any actual and necessary expenses incurred in attending such training in a manner and amount determined by the presiding judge of the district court. No person shall remain on a mental health board or be eligible for appointment or reappointment as a member or alternate member of such board unless he or she has attended and satisfactorily completed such training pursuant to rules and regulations adopted and promulgated by the department.

(2) The Director of Health and Human Services shall provide the mental health boards with blanks for warrants, certificates, and other forms and printed copies of applicable rules and regulations of the department that will enable the boards to carry out their powers and duties under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act.

Sec. 36. Section 71-917, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-917 The clerk of the district court appointed for that purpose by a district judge of that district court judicial district shall sign and issue all notices, appointments, warrants, subpoenas, or other process required to be issued by the mental health board and shall affix his or her seal as clerk of the district court. The clerk shall file and preserve in his or her office all papers connected with any proceedings of the mental health board and all related notices, reports, and other communications. The clerk shall keep minutes of all proceedings of the board. All required notices, reports, and communications may be sent by mail unless otherwise provided in the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act. The fact and date that such notices, reports, and communications have been sent and received shall be noted on the proper record.

Sec. 37. Section 71-918, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-918 Any person may voluntarily apply for admission to any public or private hospital, other treatment facility, or program for treatment of mental illness, ~~or~~ substance dependence, or personality disorders in accordance with the regulations of such facilities or programs governing such admissions. Any person who is voluntarily admitted for such treatment shall be unconditionally discharged from such hospital, treatment facility, or program not later than forty-eight hours after delivery of his or her written request to any official of such hospital, treatment facility, or program, unless action is taken under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act to continue his or her custody.

Sec. 38. Section 71-919, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-919 (1) A law enforcement officer who has probable cause to believe that a person is mentally ill and dangerous or a dangerous sex offender and that the harm described in section 71-908 or subdivision (1) of section 87 of this act is likely to occur before mental health board proceedings under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act may be initiated to obtain custody of the person may take such person into emergency protective custody, cause him or her to be taken into emergency protective custody, or continue his or her custody if he or she is already in custody. Such person shall be admitted to ~~the nearest~~ an appropriate and available medical facility, and shall not be placed in a jail, or Department of Correctional Services facility as provided in subsection (2) of this section. Each county shall make arrangements with appropriate medical facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities. A mental health professional who has probable cause to believe that a person is mentally ill and dangerous or a dangerous sex offender may cause such person to be taken into custody and shall have a limited privilege to hold such person until a law enforcement officer or other authorized person arrives to take custody of such person.

(2)(a) A person taken into emergency protective custody under this section shall be admitted to an appropriate and available medical facility unless such person has a prior conviction for a sex offense listed in section 29-4003.

(b) A person taken into emergency protective custody under this section who has a prior conviction for a sex offense listed in section 29-4003 shall be admitted to a jail or Department of Correctional Services facility unless a medical or psychiatric emergency exists for which treatment at a medical facility is required. The person in emergency protective custody shall remain at the medical facility until the medical or psychiatric emergency has passed and it is safe to transport such person, at which time the person shall be transferred to an available jail or Department of Correctional Services facility.

~~(2)~~ (3) Upon admission to a ~~medical~~ facility of a person taken into emergency protective custody by a law enforcement officer under this section, such officer shall execute a written certificate prescribed and provided by the Director of Health and Human Services. The certificate shall allege the officer's belief that the person in custody is mentally ill and dangerous or a dangerous sex offender and shall contain a summary of the person's behavior supporting such allegations. A copy of such certificate shall be immediately forwarded to the county attorney.

~~(3)~~ (4) The administrator of the facility shall have such person evaluated by a mental health professional as soon as reasonably possible but not later than thirty-six hours after admission. The mental health professional shall not be the mental health professional who causes such

person to be taken into custody under this section and shall not be a member or alternate member of the mental health board that will preside over any hearing under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act with respect to such person. A person shall be released from emergency protective custody after completion of such evaluation unless the mental health professional determines, in his or her clinical opinion, that such person is mentally ill and dangerous or a dangerous sex offender.

Sec. 39. Section 71-942, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-942 The Governor may appoint an agent to demand of the executive authority of another state any person who is located in such other state, who was receiving treatment at a treatment facility or program in this state pursuant to the Nebraska Mental Health Commitment Act, the Sex Offender Commitment Act, or section 29-1823, 29-2203, or 29-3701 to 29-3704, and who is absent without authorization from such treatment facility or program. The demand shall be accompanied by a certified copy of the order of commitment and a sworn statement by the administrator of the treatment facility or program stating that (1) the person is absent without authorization, (2) the administrator or program director of such treatment facility or program believes that such person is currently dangerous to himself, herself, or others, and (3) the treatment facility or program is willing to accept the person back for further treatment. This section does not prevent extradition under the Uniform Criminal Extradition Act if such act applies.

Sec. 40. Section 71-944, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-944 A subject shall, in advance of the mental health board hearing conducted under section 71-924 or section 64 of this act, be entitled to written notice of the time and place of such hearing, the reasons alleged for believing that he or she is mentally ill and dangerous or a dangerous sex offender requiring inpatient or outpatient treatment ordered by the mental health board, and all rights to which such subject is entitled under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act. The notice requirements shall be deemed satisfied by personal service upon the subject of the summons or notice of time and place of the hearing and copies of the petition and list of rights required by sections 71-923 and 71-924 or sections 63 and 64 of this act. If the subject has counsel and if the physician or mental health professional on the board determines that the nature of the alleged mental disorder or personality disorder, if true, is such that it is not prudent to disclose the label of the mental disorder or personality disorder to the subject, then notice of this label may be disclosed to the subject's counsel rather than to the subject. When the subject does not have counsel, the subject has a right to the information about his or her mental illness or personality disorder, including its label. The clerk shall issue the summons by order of the mental health board.

Sec. 41. Section 71-945, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-945 A subject shall have the right to be represented by counsel in all proceedings under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act. Counsel for a subject who is in custody shall have full access to and the right to consult privately with the subject at all reasonable times. As soon as possible after a subject is taken into emergency protective custody under section 71-919, or after the filing of a petition under section 71-921 or section 61 of this act, whichever occurs first, and before the mental health board hearing conducted under section 71-924 or section 64 of this act, the board shall determine whether the subject is indigent. If the subject is found to be indigent, the board shall certify that fact to the district or county court by causing to be delivered to the clerk of such court a certificate for appointment of counsel as soon as possible after a subject is taken into emergency protective custody or such petition is filed.

Sec. 42. Section 71-946, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-946 The appointment of counsel under section 71-945 shall be in accordance with the following procedures:

(1) Except in counties having a public defender, upon the receipt from the mental health board of a certificate for the appointment of counsel, the clerk of the district court shall notify the district judge or the county judge of the county in which the proceedings are pending of the receipt of such certificate. The judge to whom the certificate was issued shall appoint an attorney to represent the person concerning whom an application is filed before the mental health board, whereupon the clerk of the court shall enter upon the certificate the name of the attorney appointed and deliver

the certificate of appointment of counsel to the mental health board. The clerk of the district court or the clerk of the county court shall also keep and maintain a record of all appointments which shall be conclusive evidence thereof. All appointments of counsel under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act may be made at any time or place in the state; and

(2) In counties having a public defender, upon receipt from the mental health board of a certificate for the appointment of counsel, the clerk of the district court shall notify the public defender of his or her appointment to represent the person and shall enter upon the certificate the name of the attorney appointed and deliver the certificate of appointment of counsel to the mental health board.

Sec. 43. Section 71-947, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-947 Counsel appointed as provided in subdivision (1) of section 71-946 shall apply to the court in which his or her appointment is recorded for fees for services performed. Such counsel may also apply to the court to secure separate professional examination of the person for whom counsel was appointed and shall be reimbursed for costs incurred in securing such separate examination or examinations or in having other professional persons as witnesses before the mental health board. The court, upon hearing the application, shall fix reasonable fees, including reimbursement of costs incurred. The county board of the county in which the application was filed shall allow the account, bill, or claim presented by the attorney for services performed under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act in the amount determined by the court. No such account, bill, or claim shall be allowed by the county board until the amount thereof has been determined by the court.

Sec. 44. Section 71-948, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-948 A subject or the subject's counsel shall have the right to employ mental health professionals of his or her choice to independently evaluate the subject's mental condition and testify for and otherwise assist the subject in proceedings under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act. If the subject is indigent, only one such person may be employed except with leave of the mental health board. Any person so employed by a subject determined by the board to be indigent, except a subject represented by the public defender, shall apply to the board for expenses reasonably necessary to such person's effective assistance of the subject and for reasonable fees for services performed by such person in assisting the subject. The board shall then fix reasonable fees and expenses, and the county board shall allow payment to such person in the full amount fixed by the board.

Sec. 45. Section 71-949, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-949 Counsel for a subject, upon request made to the county attorney at any time after the subject has been taken into emergency protective custody under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act, or after the filing of a petition under section 71-921 or section 61 of this act, whichever occurs first, shall have the right to be provided with (1) the names of all witnesses expected to testify in support of the petition, (2) knowledge of the location and access at reasonable times for review or copying of all written documents including reports of peace officers, law enforcement agencies, and mental health professionals, (3) access to all other tangible objects in the possession of the county attorney or to which the county attorney has access, and (4) written records of any treatment facility or mental health professional which or who has at any time treated the subject for mental illness, ~~or~~ substance dependence, or a personality disorder, which records are relevant to the issues of whether the subject is mentally ill and dangerous or a dangerous sex offender and, if so, what treatment disposition should be ordered by the mental health board. The board may order further discovery at its discretion. The county attorney shall have a reciprocal right to discover items and information comparable to those first discovered by the subject. The county court and district court shall have the power to rule on objections to discovery in matters which are not self-activating. The right of appeal from denial of discovery shall be at the time of the conclusion of the mental health board hearing.

Sec. 46. Section 71-954, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-954 A subject shall have the right at a hearing held under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act to

confront and cross-examine adverse witnesses and evidence equivalent to the rights of confrontation granted by Amendments VI and XIV of the United States Constitution and Article I, section 11, of the Constitution of Nebraska.

Sec. 47. Section 71-956, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-956 A subject shall be entitled to written statements by the mental health board as to the evidence relied on and reasons (1) for finding clear and convincing evidence at the subject's hearing that he or she is mentally ill and dangerous or a dangerous sex offender and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the mental health board are available or would suffice to prevent the harm described in section 71-908 or subdivision (1) of section 87 of this act and (2) for choosing the particular treatment specified by its order of final disposition. The mental health board shall make similar written findings when it orders a subject held in custody rather than released on conditions pending hearings to determine whether he or she is mentally ill and dangerous or a dangerous sex offender and in need of treatment ordered by the mental health board or pending the entry of an order of final disposition under section 71-925 or section 65 of this act.

Sec. 48. Section 71-957, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-957 All proceedings held under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act shall be of record, and all oral proceedings shall be reported verbatim by either a qualified shorthand reporter or by tape-recording equipment equivalent in quality to that required in county courts by section 25-2732. The written findings of the mental health board shall be part of the subject's records and shall be available to the parties in the case and to the treatment facility where the subject is receiving treatment pursuant to a commitment order of the mental health board under section 71-925 or section 65 of this act. Any qualified shorthand reporter who reports proceedings presided over by a board or otherwise than in his or her capacity as an official district court stenographic reporter shall apply to the court for reasonable expenses and fees for services performed in such hearings. The court shall fix reasonable expenses and fees, and the county board shall allow payment to the reporter in the full amount fixed by the court.

Sec. 49. Section 71-958, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-958 Any qualified mental health professional, upon being authorized by the administrator of the treatment facility having custody of the subject, may provide appropriate medical treatment for the subject while in custody, except that a subject shall not be subjected to such quantities of medication or other treatment within such period of time prior to any hearing held under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act as will substantially impair his or her ability to assist in his or her defense at such hearing.

Sec. 50. Section 71-959, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-959 A subject in custody or receiving treatment under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act has the right:

(1) To be considered legally competent for all purposes unless he or she has been declared legally incompetent. The mental health board shall not have the power to declare an individual incompetent;

(2) To receive prompt and adequate evaluation and treatment for mental illness, personality disorders, and physical ailments and to participate in his or her treatment planning activities to the extent determined to be appropriate by the mental health professional in charge of the subject's treatment;

(3) To refuse treatment medication, except (a) in an emergency, such treatment medication as is essential in the judgment of the mental health professional in charge of such treatment to prevent the subject from causing injury to himself, herself, or others or (b) following a hearing and order of a mental health board, such treatment medication as will substantially improve his or her mental illness or personality disorder or reduce the risk posed to the public by a dangerous sex offender;

(4) To communicate freely with any other person by sealed mail, personal visitation, and private telephone conversations;

(5) To have reasonably private living conditions, including private storage space for personal belongings;

(6) To engage or refuse to engage in religious worship and political

activity;

(7) To be compensated for his or her labor in accordance with the federal Fair Labor Standards Act, 29 U.S.C. 206, as such section existed on January 1, 2004;

(8) To have access to a patient grievance procedure; and

(9) To file, either personally or by counsel, petitions or applications for writs of habeas corpus for the purpose of challenging the legality of his or her custody or treatment.

Sec. 51. Section 71-960, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-960 A subject may waive any of the proceedings or rights incident to proceedings granted him or her under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act by failing to request any right expressly required to be requested but, in the case of all other such rights, only if the record reflects that such waiver was made personally, intelligently, knowingly, understandingly, and voluntarily by the subject and such subject's legal guardian or conservator, if any. Such rights may otherwise be denied only by a mental health board or court order for good cause shown after notice to the subject, the subject's counsel, and such subject's guardian or conservator, if any, and an opportunity to be heard. If the mental health board determines that the subject is not able to waive his or her rights under this section, it shall be up to the discretion of the subject's counsel to exercise such rights. When the subject is not represented by counsel, the rights may not be waived.

Sec. 52. Section 71-961, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-961 (1) All records kept on any subject shall remain confidential except as otherwise provided by law. Such records shall be accessible to (a) the subject, except as otherwise provided in subsection (2) of this section, (b) the subject's legal counsel, (c) the subject's guardian or conservator, if any, (d) the mental health board having jurisdiction over the subject, (e) persons authorized by an order of a judge or court, (f) persons authorized by written permission of the subject, (g) agents or employees of the Department of Health and Human Services Regulation and Licensure upon delivery of a subpoena from the department in connection with a licensing or licensure investigation by the department, ~~or~~ (h) individuals authorized to receive notice of the release of a sex offender pursuant to section 86 of this act, (i) the Nebraska State Patrol or the Department of Health and Human Services pursuant to section 69-2409.01, or (j) the Office of Parole Administration if the subject meets the requirements for lifetime community supervision pursuant to section 89 of this act.

(2) Upon application by the county attorney or by the administrator of the treatment facility where the subject is in custody and upon a showing of good cause therefor, a judge of the district court of the county where the mental health board proceedings were held or of the county where the treatment facility is located may order that the records not be made available to the subject if, in the judgment of the court, the availability of such records to the subject will adversely affect his or her mental illness or personality disorder and the treatment thereof.

(3) When a subject is absent without authorization from a treatment facility or program described in section 71-939 or section 79 of this act and is considered to be dangerous to others, the subject's name and description and a statement that the subject is believed to be considered dangerous to others may be disclosed in order to aid in the subject's apprehension and to warn the public of such danger.

Sec. 53. Section 71-962, Revised Statutes Cumulative Supplement, 2004, is amended to read:

71-962 Any person who willfully (1) files or causes to be filed a certificate or petition under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act, knowing any of the allegations thereof to be false, (2) deprives a subject of any of the rights granted the subject by ~~the~~ either act or section 83-390, or (3) breaches the confidentiality of records required by section 71-961 shall be guilty of a Class II misdemeanor in addition to any civil liability which he or she may incur for such ~~aets~~ actions.

Sec. 54. Section 71-1128, Revised Statutes Supplement, 2005, is amended to read:

71-1128 (1) If at any time it appears that the subject no longer poses a threat of harm to others, any party may file a motion for a review hearing to be held as soon as practicable. The party filing the motion under this subsection shall have the burden of showing by a preponderance of the evidence that the subject no longer poses a threat of harm to others. If it is

shown that the subject no longer poses a threat of harm to others, the court shall enter an order dismissing the case and immediately release the subject.

(2) If at any time it appears that (a) the plan submitted under section 71-1124 or 71-1127 is not sufficient to protect society or the subject or (b) the circumstances upon which the plan was based have changed significantly, any party may file a motion, to be granted for good cause shown, for a review hearing to be held as soon as practicable. The party filing the motion under this subsection shall have the burden of showing by clear and convincing evidence that the court-ordered custody and treatment of the subject should be modified or vacated.

(3) Upon the filing of a motion for a review hearing pursuant to this section, the department shall immediately provide notice to the Attorney General and the county attorney who filed a petition under section 71-1117 if the proceeding by which the subject is placed in court-ordered custody included evidence of a sex offense as defined in section 87 of this act or if any prior proceedings resulting in a civil commitment or court-ordered custody included evidence of a sex offense as defined in section 87 of this act.

Sec. 55. When sentencing a person convicted of an offense which requires a civil commitment evaluation pursuant to section 88 of this act, the sentencing court shall:

(1) Provide written notice to the defendant that a civil commitment evaluation is required prior to his or her release from incarceration;

(2) Require the defendant to read and sign a form stating that the defendant has been informed that a civil commitment evaluation is required prior to his or her release from incarceration; and

(3) Retain a copy of the written notification signed by the defendant.

Sec. 56. Section 71-6908, Reissue Revised Statutes of Nebraska, is amended to read:

71-6908 The Legislature recognizes and hereby declares that some teenage pregnancies are a direct or indirect result of family or foster family abuse, neglect, or sexual assault. The Legislature further recognizes that the actions of abuse, neglect, or sexual assault are crimes regardless of whether they are committed by strangers, acquaintances, or family members. The Legislature further recognizes the need for a parent or guardian notification bypass system as set out in section 71-6903 due to the number of unhealthy family environments in which some pregnant women reside. The Legislature encourages county attorneys to prosecute persons accused of committing acts of abuse, incest, neglect, or sexual assault pursuant to sections 28-319, 28-320, 28-320.01, 28-703, and 28-707 and section 6 of this act even if the alleged crime is committed by a biological or adoptive parent, foster parent, or other biological, adoptive, or foster family member.

Sec. 57. Sections 57 to 82 of this act shall be known and may be cited as the Sex Offender Commitment Act.

Sec. 58. The purpose of the Sex Offender Commitment Act is to provide for the court-ordered treatment of sex offenders who have completed their sentences but continue to pose a threat of harm to others. It is the public policy of the State of Nebraska that dangerous sex offenders be encouraged to obtain voluntary treatment. If voluntary treatment is not obtained, such persons shall be subject to involuntary custody and treatment only after mental health board proceedings as provided by the Sex Offender Commitment Act. Such persons shall be subjected to emergency protective custody under limited conditions and for a limited period of time.

Sec. 59. For purposes of the Sex Offender Commitment Act:

(1) The definitions found in sections 71-905, 71-906, 71-907, 71-910, and 71-911 and section 87 of this act apply;

(2) Administrator means the administrator or other chief administrative officer of a treatment facility or his or her designee;

(3) Outpatient treatment means treatment ordered by a mental health board directing a subject to comply with specified outpatient treatment requirements, including, but not limited to, (a) taking prescribed medication, (b) reporting to a mental health professional or treatment facility for treatment or for monitoring of the subject's condition, or (c) participating in individual or group therapy or educational, rehabilitation, residential, or vocational programs;

(4) Subject means any person concerning whom (a) a certificate has been filed under section 60 of this act, (b) a certificate has been filed under section 71-919 and such person is held pursuant to subdivision (2)(b) of section 71-919, or (c) a petition has been filed under the Sex Offender Commitment Act. Subject does not include any person under eighteen years of age unless such person is an emancipated minor; and

(5) Treatment facility means a facility which provides services for

persons who are dangerous sex offenders.

Sec. 60. (1) A mental health professional who, upon evaluation of a person admitted for emergency protective custody under section 71-919, determines that such person is a dangerous sex offender shall execute a written certificate as provided in subsection (2) of this section not later than twenty-four hours after the completion of such evaluation. A copy of such certificate shall be immediately forwarded to the county attorney.

(2) The certificate shall be in writing and shall include the following information:

(a) The subject's name and address, if known;

(b) The name and address of the subject's spouse, legal counsel, guardian or conservator, and next of kin, if known;

(c) The name and address of anyone providing psychiatric or other care or treatment to the subject, if known;

(d) The name and address of any other person who may have knowledge of the subject's mental illness or personality disorder who may be called as a witness at a mental health board hearing with respect to the subject, if known;

(e) The name and address of the medical facility in which the subject is being held for emergency protective custody and evaluation;

(f) The name and work address of the certifying mental health professional;

(g) A statement by the certifying mental health professional that he or she has evaluated the subject since the subject was admitted for emergency protective custody and evaluation; and

(h) A statement by the certifying mental health professional that, in his or her clinical opinion, the subject is a dangerous sex offender and the clinical basis for such opinion.

Sec. 61. (1) Any person who believes that another person is a dangerous sex offender may communicate such belief to the county attorney. The filing of a certificate by a law enforcement officer under section 71-919 shall be sufficient to communicate such belief. If the county attorney concurs that such person is a dangerous sex offender and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by a mental health board is available or would suffice to prevent the harm described in subdivision (1) of section 87 of this act, the county attorney shall file a petition as provided in this section.

(2) The petition shall be filed with the clerk of the district court in any county within: (a) The judicial district in which the subject is located; (b) the judicial district in which the alleged behavior of the subject occurred which constitutes the basis for the petition; or (c) another judicial district in the State of Nebraska, if authorized, upon good cause shown, by a district judge of the judicial district in which the subject is located. In such event, all proceedings before the mental health board shall be conducted by the mental health board serving such other county and all costs relating to such proceedings shall be paid by the county of residence of the subject. In the order transferring such cause to another county, the judge shall include such directions as are reasonably necessary to protect the rights of the subject.

(3) The petition shall be in writing and shall include the following information:

(a) The subject's name and address, if known;

(b) The name and address of the subject's spouse, legal counsel, guardian or conservator, and next of kin, if known;

(c) The name and address of anyone providing psychiatric or other care or treatment to the subject, if known;

(d) A statement that the county attorney has probable cause to believe that the subject of the petition is a dangerous sex offender;

(e) A statement that the beliefs of the county attorney are based on specific behavior, acts, criminal convictions, attempts, or threats which shall be described in detail in the petition; and

(f) The name and address of any other person who may have knowledge of the subject's mental illness or personality disorder and who may be called as a witness at a mental health board hearing with respect to the subject, if known.

Sec. 62. (1) Mental health board proceedings shall be deemed to have commenced upon the earlier of (a) the filing of a petition under section 61 of this act or (b) notification by the county attorney to the law enforcement officer who took the subject into emergency protective custody under section 71-919 or the administrator of the treatment facility having charge of the subject of the intention of the county attorney to file such petition. The

county attorney shall file such petition as soon as reasonably practicable after such notification.

(2) A petition filed by the county attorney under section 61 of this act may contain a request for the emergency protective custody and evaluation of the subject prior to commencement of a mental health board hearing pursuant to such petition with respect to the subject. Upon receipt of such request and upon a finding of probable cause to believe that the subject is a dangerous sex offender as alleged in the petition, the court or chairperson of the mental health board may issue a warrant directing the sheriff to take custody of the subject. If the subject is already in emergency protective custody under a certificate filed under section 71-919, a copy of such certificate shall be filed with the petition. The subject in such custody shall be held in an appropriate and available medical facility, jail, or Department of Correctional Services facility. A dangerous sex offender shall not be admitted to a medical facility for emergency protective custody unless a medical or psychiatric emergency exists requiring treatment not available at a jail or correctional facility. Each county shall make arrangements with appropriate facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities.

(3) The petition and all subsequent pleadings and filings in the case shall be entitled In the Interest of , Alleged to be a Dangerous Sex Offender. The county attorney may dismiss the petition at any time prior to the commencement of the hearing of the mental health board under section 64 of this act, and upon such motion by the county attorney, the mental health board shall dismiss the petition.

Sec. 63. Upon the filing of the petition under section 61 of this act, the clerk of the district court shall cause a summons fixing the time and place for a hearing to be prepared and issued to the sheriff for service. The sheriff shall personally serve upon the subject and the subject's legal guardian or custodian, if any, the summons and copies of the petition, the list of rights provided by sections 71-943 to 71-960, and a list of the names, addresses, and telephone numbers of mental health professionals in the immediate vicinity by whom the subject may be evaluated prior to his or her hearing. The summons shall fix a time for the hearing within seven calendar days after the subject has been taken into emergency protective custody. The failure of a subject to appear as required under this section shall constitute grounds for the issuance by the mental health board of a warrant for his or her custody.

Sec. 64. A hearing shall be held by the mental health board to determine whether there is clear and convincing evidence that the subject is a dangerous sex offender as alleged in the petition. At the commencement of the hearing, the board shall inquire whether the subject has received a copy of the petition and list of rights accorded him or her by sections 71-943 to 71-960 and whether he or she has read and understood them. The board shall explain to the subject any part of the petition or list of rights which he or she has not read or understood. The board shall inquire of the subject whether he or she admits or denies the allegations of the petition. If the subject admits the allegations, the board shall proceed to enter a treatment order pursuant to section 65 of this act. If the subject denies the allegations of the petition, the board shall proceed with a hearing on the merits of the petition.

Sec. 65. (1) The state has the burden to prove by clear and convincing evidence that (a) the subject is a dangerous sex offender and (b) neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the mental health board are available or would suffice to prevent the harm described in subdivision (1) of section 87 of this act.

(2) If the mental health board finds that the subject is not a dangerous sex offender, the board shall dismiss the petition and order the unconditional discharge of the subject.

(3) If the mental health board finds that the subject is a dangerous sex offender but that voluntary hospitalization or other treatment alternatives less restrictive of the subject's liberty than treatment ordered by the mental health board are available and would suffice to prevent the harm described in subdivision (1) of section 87 of this act, the board shall (a) dismiss the petition and order the unconditional discharge of the subject or (b) suspend further proceedings for a period of up to ninety days to permit the subject to obtain voluntary treatment. At any time during such ninety-day period, the county attorney may apply to the board for reinstatement of proceedings with respect to the subject, and after notice to the subject, the subject's counsel, and the subject's legal guardian or conservator, if any,

the board shall hear the application. If no such application is filed or pending at the conclusion of such ninety-day period, the board shall dismiss the petition and order the unconditional discharge of the subject.

(4) If the subject admits the allegations of the petition or the mental health board finds that the subject is a dangerous sex offender and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the board are available or would suffice to prevent the harm described in subdivision (1) of section 87 of this act, the board shall, within forty-eight hours, (a) order the subject to receive outpatient treatment or (b) order the subject to receive inpatient treatment. If the subject is ordered by the board to receive inpatient treatment, the order shall commit the subject to the custody of the Department of Health and Human Services for such treatment.

(5) A subject who (a) is ordered by the mental health board to receive inpatient treatment and (b) has not yet been admitted for such treatment pursuant to such order may petition for a rehearing by the mental health board based on improvement in the subject's condition such that inpatient treatment ordered by the board would no longer be necessary or appropriate.

(6) A treatment order by the mental health board under this section shall represent the appropriate available treatment alternative that imposes the least possible restraint upon the liberty of the subject. The board shall consider all treatment alternatives, including any treatment program or conditions suggested by the subject, the subject's counsel, or other interested person. Inpatient hospitalization or custody shall only be considered as a treatment alternative of last resort. The county attorney and the subject may jointly offer a proposed treatment order for adoption by the board. The board may enter the proposed order without a full hearing.

(7) The mental health board may request the assistance of the Department of Health and Human Services or any other person or public or private entity to advise the board prior to the entry of a treatment order pursuant to this section and may require the subject to submit to reasonable psychiatric and psychological evaluation to assist the board in preparing such order. Any mental health professional conducting such evaluation at the request of the mental health board shall be compensated by the county or counties served by such board at a rate determined by the district judge and reimbursed for mileage at the rate provided in section 81-1176.

Sec. 66. (1) At the conclusion of a mental health board hearing under section 64 of this act and prior to the entry of a treatment order by the board under section 65 of this act, the board may (a) order that the subject be retained in custody until the entry of such order and the subject may be admitted for treatment pursuant to such order or (b) order the subject released from custody under such conditions as the board deems necessary and appropriate to prevent the harm described in subdivision (1) of section 87 of this act and to assure the subject's appearance at a later disposition hearing by the board. A subject shall be retained in custody under this section at an appropriate and available medical facility, jail, or Department of Correctional Services facility. A dangerous sex offender shall not be admitted to a medical facility for emergency protective custody unless a medical or psychiatric emergency exists requiring treatment not available at a jail or correctional facility. Each county shall make arrangements with appropriate facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities.

(2) A subject who has been ordered to receive inpatient or outpatient treatment by a mental health board may be provided treatment while being retained in emergency protective custody and pending admission of the subject for treatment pursuant to such order.

Sec. 67. If the mental health board finds the subject to be a dangerous sex offender and commits the subject to the custody of the Department of Health and Human Services to receive inpatient treatment, the department shall secure placement of the subject in an appropriate inpatient treatment facility to receive such treatment. The board shall issue a warrant authorizing the administrator of such treatment facility to receive and keep the subject as a patient. The warrant shall state the findings of the board and the legal settlement of the subject, if known, or any available information relating thereto. Such warrant shall shield every official and employee of the treatment facility against all liability to prosecution of any kind on account of the reception and detention of the subject if the detention is otherwise in accordance with the Sex Offender Commitment Act, rules and regulations adopted and promulgated under the act, and policies of

the treatment facility.

Sec. 68. When an order of a mental health board requires inpatient treatment of a subject within a treatment facility, the warrant filed under section 67 of this act, together with the findings of the mental health board, shall be delivered to the sheriff of the county who shall execute such warrant by conveying and delivering the warrant, the findings, and the subject to the treatment facility. The administrator, over his or her signature, shall acknowledge the delivery on the original warrant which the sheriff shall return to the clerk of the district court with his or her costs and expenses endorsed thereon. If neither the sheriff nor deputy sheriff is available to execute the warrant, the chairperson of the mental health board may appoint some other suitable person to execute the warrant. Such person shall take and subscribe an oath or affirmation to faithfully discharge his or her duty and shall be entitled to the same fees as the sheriff. The sheriff, deputy sheriff, or other person appointed by the mental health board may take with him or her such assistance as may be required to execute the warrant. No female subject shall be taken to a treatment facility without being accompanied by another female or relative of the subject. The administrator in his or her acknowledgment of delivery shall record whether any person accompanied the subject and the name of such person.

Sec. 69. (1) If a mental health board issues a warrant for the admission or return of a subject to a treatment facility and funds to pay the expenses thereof are needed in advance, the board shall estimate the probable expense of conveying the subject to the treatment facility, including the cost of any assistance that might be required, and shall submit such estimate to the county clerk of the county in which such person is located. The county clerk shall certify the estimate and shall issue an order on the county treasurer in favor of the sheriff or other person entrusted with the execution of the warrant.

(2) The sheriff or other person executing the warrant shall include in his or her return a statement of expenses actually incurred, including any excess or deficiency. Any excess from the amount advanced for such expenses under subsection (1) of this section shall be paid to the county treasurer, taking his or her receipt therefor, and any deficiency shall be obtained by filing a claim with the county board. If no funds are advanced, the expenses shall be certified on the warrant and paid when returned.

(3) The sheriff shall be reimbursed for mileage at the rate provided in section 33-117 for conveying a subject to a treatment facility under this section. For other services performed under the Sex Offender Commitment Act, the sheriff shall receive the same fees as for like services in other cases.

(4) All compensation and expenses provided for in this section shall be allowed and paid out of the treasury of the county by the county board.

Sec. 70. The subject of a petition or the county attorney may appeal a treatment order of the mental health board under section 65 of this act to the district court. Such appeals shall be de novo on the record. A final order of the district court may be appealed to the Court of Appeals in accordance with the procedure in criminal cases. The final judgment of the court shall be certified to and become a part of the records of the mental health board with respect to the subject.

Sec. 71. (1) Any treatment order entered by a mental health board under section 65 of this act shall include directions for (a) the preparation and implementation of an individualized treatment plan for the subject and (b) documentation and reporting of the subject's progress under such plan.

(2) The individualized treatment plan shall contain a statement of (a) the nature of the subject's mental illness or personality disorder, (b) the least restrictive treatment alternative consistent with the clinical diagnosis of the subject, and (c) intermediate and long-term treatment goals for the subject and a projected timetable for the attainment of such goals.

(3) A copy of the individualized treatment plan shall be filed with the mental health board for review and inclusion in the subject's file and served upon the county attorney, the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, within five working days after the entry of the board's order. Treatment shall be commenced within two working days after preparation of the plan.

(4) The subject shall be entitled to know the contents of the individualized treatment plan and what the subject must do in order to meet the requirements of such plan.

(5) The subject shall be notified by the mental health board when the mental health board has changed the treatment order or has ordered the discharge of the subject from commitment.

Sec. 72. The person or entity designated by the mental health board under section 71 of this act to prepare and oversee the subject's

individualized treatment plan shall submit periodic reports to the mental health board of the subject's progress under such plan and any modifications to the plan. The mental health board may distribute copies of such reports to other interested parties as permitted by law. With respect to a subject ordered by the mental health board to receive inpatient treatment, such initial report shall be filed with the mental health board for review and inclusion in the subject's file and served upon the county attorney, the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, no later than ten days after submission of the subject's individualized treatment plan. With respect to each subject committed by the mental health board, such reports shall be so filed and served no less frequently than every ninety days for a period of one year following submission of the subject's individualized treatment plan and every six months thereafter.

Sec. 73. (1) Any provider of outpatient treatment to a subject ordered by a mental health board to receive such treatment shall report to the board and to the county attorney if (a) the subject is not complying with his or her individualized treatment plan, (b) the subject is not following the conditions set by the mental health board, (c) the treatment plan is not effective, or (d) there has been a significant change in the subject's mental illness or personality disorder or the level of risk posed to the public. Such report may be transmitted by facsimile, but the original of the report shall be mailed to the board and the county attorney no later than twenty-four hours after the facsimile transmittal.

(2) (a) Upon receipt of such report, the county attorney shall have the matter investigated to determine whether there is a factual basis for the report.

(b) If the county attorney determines that there is no factual basis for the report or that no further action is warranted, he or she shall notify the board and the treatment provider and take no further action.

(c) If the county attorney determines that there is a factual basis for the report and that intervention by the mental health board is necessary to protect the subject or others, the county attorney may file a motion for reconsideration of the conditions set forth by the board and have the matter set for hearing.

(d) The county attorney may apply for a warrant to take immediate custody of the subject pending a rehearing by the board under subdivision (c) of this subsection if the county attorney has reasonable cause to believe that the subject poses a threat of danger to himself or herself or others prior to such rehearing. The application for a warrant shall be supported by affidavit or sworn testimony by the county attorney, a mental health professional, or any other informed person. The application for a warrant and the supporting affidavit may be filed with the board by facsimile, but the original shall be filed with the board not later than three days after the facsimile transmittal, excluding holidays and weekends. Sworn testimony in support of the warrant application may be taken over the telephone at the discretion of the board.

Sec. 74. The mental health board shall, upon motion of the county attorney, or may, upon its own motion, hold a hearing to determine whether a subject ordered by the board to receive outpatient treatment can be adequately and safely served by the individualized treatment plan for such subject on file with the board. The mental health board may issue a warrant directing any law enforcement officer in the state to take custody of the subject and directing the sheriff or other suitable person to transport the subject to a treatment facility or public or private hospital with available capacity specified by the board where he or she will be held pending such hearing. No person may be held in custody under this section for more than seven days except upon a continuance granted by the board. At the time of execution of the warrant, the sheriff or other suitable person designated by the board shall personally serve upon the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, a notice of the time and place fixed for the hearing, a copy of the motion for hearing, and a list of the rights provided by the Sex Offender Commitment Act. The subject shall be accorded all the rights guaranteed to a subject by the act. Following the hearing, the board shall determine whether outpatient treatment will be continued, modified, or ended.

Sec. 75. (1) Upon the filing of a periodic report under section 72 of this act, the subject, the subject's counsel, or the subject's legal guardian or conservator, if any, may request and shall be entitled to a review hearing by the mental health board and to seek from the board an order of discharge from commitment or a change in treatment ordered by the board. The mental health board shall schedule the review hearing no later than fourteen

calendar days after receipt of such request. The mental health board may schedule a review hearing (a) at any time pursuant to section 77 or 78 of this act, (b) upon the request of the subject, the subject's counsel, the subject's legal guardian or conservator, if any, the county attorney, the official, agency, or other person or entity designated by the mental health board under section 71 of this act to prepare and oversee the subject's individualized treatment plan, or the mental health professional directly involved in implementing such plan, or (c) upon the board's own motion.

(2) The board shall immediately discharge the subject or enter a new treatment order with respect to the subject whenever it is shown by any person or it appears upon the record of the periodic reports filed under section 72 of this act to the satisfaction of the board that (a) the subject's mental illness or personality disorder has been successfully treated or managed to the extent that the subject no longer poses a threat to the public or (b) a less restrictive treatment alternative exists for the subject which does not increase the risk that the subject will commit another sex offense. When discharge or a change in disposition is in issue, due process protections afforded under the Sex Offender Commitment Act shall attach to the subject.

Sec. 76. When the administrator of any regional center or treatment facility for the treatment of dangerous sex offenders determines that any involuntary patient in such facility may be safely and properly discharged or placed on convalescent leave, the administrator of such regional center or treatment facility shall immediately notify the mental health board of the judicial district from which such patient was committed.

Sec. 77. A mental health board shall be notified in writing of the release by the treatment facility of any individual committed by the mental health board. Such notice shall immediately be forwarded to the county attorney. The mental health board shall, upon the motion of the county attorney, or may upon its own motion, conduct a hearing to determine whether the individual is a dangerous sex offender and consequently not a proper subject for release. Such hearing shall be conducted in accordance with the procedures established for hearings under the Sex Offender Commitment Act. The subject of such hearing shall be accorded all rights guaranteed to the subject of a petition under the act.

Sec. 78. The mental health board shall, upon the motion of the county attorney, or may upon its own motion, hold a hearing to determine whether a person who has been ordered by the board to receive inpatient or outpatient treatment is adhering to the conditions of his or her release from such treatment, including the taking of medication. The subject of such hearing shall be accorded all rights guaranteed to a subject under the Sex Offender Commitment Act, and such hearing shall apply the standards used in all other hearings held pursuant to the act. If the mental health board concludes from the evidence at the hearing that there is clear and convincing evidence that the subject is a dangerous sex offender, the board shall so find and shall within forty-eight hours enter an order of final disposition providing for the treatment of such person in accordance with section 65 of this act.

Sec. 79. When any person receiving treatment at a treatment facility or program for dangerous sex offenders pursuant to an order of a court or mental health board is absent without authorization from such treatment facility or program, the administrator or program director of such treatment facility or program shall immediately notify the Nebraska State Patrol and the court or clerk of the mental health board of the judicial district from which such person was committed. The notification shall include the person's name and description and a determination by a psychiatrist, clinical director, administrator, or program director as to whether the person is believed to be currently dangerous to others. The clerk shall issue the warrant of the board directed to the sheriff of the county for the arrest and detention of such person. Such warrant may be executed by the sheriff or any other peace officer. Pending the issuance of the warrant of the mental health board, any peace officer may seize and detain such person when the peace officer has probable cause to believe that the person is reported to be absent without authorization as described in the section. Such person shall be returned to the treatment facility or program or shall be taken to a facility as described in section 71-919 until he or she can be returned to such treatment facility or program.

Sec. 80. In addition to the rights granted subjects by any other provisions of the Sex Offender Commitment Act, such subjects shall be entitled to the rights provided in sections 71-943 to 71-960 during proceedings concerning the subjects under the act.

Sec. 81. All mental health board hearings under the Sex Offender Commitment Act shall be closed to the public except at the request of the

subject and shall be held in a courtroom or at any convenient and suitable place designated by the mental health board. The board shall have the right to conduct the proceeding where the subject is currently residing if the subject is unable to travel.

Sec. 82. The rules of evidence applicable in civil proceedings shall apply at all hearings held under the Sex Offender Commitment Act. In no event shall evidence be considered which is inadmissible in criminal proceedings.

Sec. 83. Section 79-267, Reissue Revised Statutes of Nebraska, is amended to read:

79-267 The following student conduct shall constitute grounds for long-term suspension, expulsion, or mandatory reassignment, subject to the procedural provisions of the Student Discipline Act, when such activity occurs on school grounds, in a vehicle owned, leased, or contracted by a school being used for a school purpose or in a vehicle being driven for a school purpose by a school employee or by his or her designee, or at a school-sponsored activity or athletic event:

(1) Use of violence, force, coercion, threat, intimidation, or similar conduct in a manner that constitutes a substantial interference with school purposes;

(2) Willfully causing or attempting to cause substantial damage to property, stealing or attempting to steal property of substantial value, or repeated damage or theft involving property;

(3) Causing or attempting to cause personal injury to a school employee, to a school volunteer, or to any student. Personal injury caused by accident, self-defense, or other action undertaken on the reasonable belief that it was necessary to protect some other person shall not constitute a violation of this subdivision;

(4) Threatening or intimidating any student for the purpose of or with the intent of obtaining money or anything of value from such student;

(5) Knowingly possessing, handling, or transmitting any object or material that is ordinarily or generally considered a weapon;

(6) Engaging in the unlawful possession, selling, dispensing, or use of a controlled substance or an imitation controlled substance, as defined in section 28-401, a substance represented to be a controlled substance, or alcoholic liquor as defined in section 53-103 or being under the influence of a controlled substance or alcoholic liquor;

(7) Public indecency as defined in section 28-806, except that this subdivision shall apply only to students at least twelve years of age but less than nineteen years of age;

(8) Sexually assaulting or attempting to sexually assault any person if a complaint has been filed by a prosecutor in a court of competent jurisdiction alleging that the student has sexually assaulted or attempted to sexually assault any person, including sexual assaults or attempted sexual assaults which occur off school grounds not at a school function, activity, or event. For purposes of this subdivision, sexual assault ~~shall mean~~ means sexual assault in the first degree as defined in section 28-319, and sexual assault in the second degree as defined in sections 28-319 and section 28-320, sexual assault of a child in the second or third degree as defined in section 28-320.01, or sexual assault of a child in the first degree as defined in section 6 of this act, as such sections now provide or may hereafter from time to time be amended;

(9) Engaging in any other activity forbidden by the laws of the State of Nebraska which activity constitutes a danger to other students or interferes with school purposes; or

(10) A repeated violation of any rules and standards validly established pursuant to section 79-262 if such violations constitute a substantial interference with school purposes.

It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a student who is truant, tardy, or otherwise absent from required school activities.

Sec. 84. Section 80-601, Revised Statutes Cumulative Supplement, 2004, is amended to read:

80-601 Whenever in any proceeding under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act it is determined that a person is mentally ill and dangerous or a dangerous sex offender as defined in section 87 of this act and it appears that such person is eligible for care or treatment by the United States Department of Veterans Affairs or another agency of the United States Government, the mental health board, upon determination by the department or such other agency that facilities are available and that such person is eligible for care or treatment therein, may commit such person to the department or other agency. Upon commitment, such person shall be subject to the applicable rules and regulations of the

department or other agency of the United States operating the institution in which such care or treatment is provided. The chief officer of any facility of the department or institution operated by any other agency of the United States to which a mentally ill and dangerous person or a dangerous sex offender is committed by a proper agency in this state shall have the same powers as chief executive officers of state hospitals for the care of the mentally ill in this state with respect to the custody, transfer, conditional discharge, or discharge of such person.

Sec. 85. Section 81-1850, Revised Statutes Cumulative Supplement, 2004, is amended to read:

81-1850 (1) Upon request of the victim and at the time of conviction of the offender, the county attorney of the jurisdiction in which a person is convicted of a felony shall forward to the Board of Parole, the Department of Correctional Services, the county corrections agency, or the Department of Health and Human Services the name and address of any victim, as defined in section 29-119, of the convicted person. The board, the Department of Correctional Services, the county corrections agency, or the Department of Health and Human Services shall include the name in the file of the convicted person, but the name shall not be part of the public record of any parole hearings of the convicted person. Any victim, including a victim who has waived his or her right to notification at the time of conviction, may request the notification prescribed in this section, as applicable, by sending a written request to the board, the Department of Correctional Services, the county corrections agency, or the Department of Health and Human Services any time after the convicted person is incarcerated and until the convicted person is no longer under the jurisdiction of the board, the county corrections agency, or the Department of Correctional Services or, if the person is under the jurisdiction of the Department of Health and Human Services, within the three-year period after the convicted person is no longer under the jurisdiction of the board, the county corrections agency, or the Department of Correctional Services.

(2) A victim whose name appears in the file of the convicted person shall be notified by the Board of Parole:

(a) Within ninety days after conviction of an offender, of the tentative date of release and the earliest parole eligibility date of such offender;

(b) Of any parole hearings or proceedings;

(c) Of any decision of the Board of Parole;

(d) When a convicted person who is on parole is returned to custody because of parole violations; and

(e) If the convicted person has been adjudged a mentally disordered sex offender or is a convicted sex offender, when such person is released from custody or treatment.

Such notification shall be given in person, by telecommunication, or by mail.

(3) A victim whose name appears in the file of the convicted person shall be notified by the Department of Correctional Services or a county corrections agency:

(a) When a convicted person is granted a furlough or release from incarceration for twenty-four hours or longer or any transfer of the convicted person to community status;

(b) When a convicted person is released into community-based programs, including educational release and work release programs. Such notification shall occur at the beginning and termination of any such program;

(c) When a convicted person escapes or does not return from a granted furlough or release and again when the convicted person is returned into custody;

(d) When a convicted person is discharged from custody upon completion of his or her sentence. Such notice shall be given at least thirty days before discharge, when practicable;

(e) Of the (i) department's calculation of the earliest parole eligibility date of the prisoner with all potential good time or disciplinary credits considered if the sentence exceeds ninety days or (ii) county corrections agency's calculation of the earliest release date of the prisoner. The victim may request one notice of the calculation described in this subdivision. Such information shall be mailed not later than thirty days after receipt of the request;

(f) Of any reduction in the prisoner's minimum sentence; and

(g) Of the victim's right to submit a statement as provided in section 81-1848.

(4) A victim whose name appears in the file of a convicted person shall be notified by the Department of Health and Human Services:

(a) When a person convicted of an offense listed in subsection (5) of this section becomes the subject of a ~~mental health~~ petition pursuant to the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act prior to his or her discharge from custody upon the completion of his or her sentence or within thirty days after such discharge. The county attorney who filed the ~~mental health~~ petition shall notify the Department of Correctional Services of such petition. The Department of Correctional Services shall forward the names and addresses of victims appearing in the file of the convicted person to the Department of Health and Human Services;

(b) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection escapes from an inpatient facility providing board-ordered treatment and again when the person is returned to an inpatient facility;

(c) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection is discharged or has a change in disposition from inpatient board-ordered treatment;

(d) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection is granted a furlough or release for twenty-four hours or longer; and

(e) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection is released into educational release programs or work release programs. Such notification shall occur at the beginning and termination of any such program.

(5) Subsection (4) of this section applies to persons convicted of at least one of the following offenses which is also alleged to be the recent act or threat underlying the commitment of such persons as mentally ill and dangerous or as dangerous sex offenders as defined in section 87 of this act:

(a) Murder in the first degree pursuant to section 28-303;

(b) Murder in the second degree pursuant to section 28-304;

(c) Kidnapping pursuant to section 28-313;

(d) Assault in the first degree pursuant to section 28-308;

(e) Assault in the second degree pursuant to section 28-309;

(f) Sexual assault in the first degree pursuant to section 28-319;

(g) Sexual assault in the second degree pursuant to section 28-320;

(h) Sexual assault of a child in the first degree pursuant to section 6 of this act;

~~(h)~~ (i) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

~~(i)~~ (j) Stalking pursuant to section 28-311.03; or

~~(j)~~ (k) An attempt, solicitation, or conspiracy to commit an offense listed in subdivisions (a) through ~~(i)~~ (j) of this subsection.

(6) A victim whose name appears in the file of a convicted person shall be notified by the Board of Pardons:

(a) Of any pardon or commutation proceedings; and

(b) If a pardon or commutation has been granted.

(7) The Board of Parole, the Department of Correctional Services, the Department of Health and Human Services, and the Board of Pardons shall adopt and promulgate rules and regulations as needed to carry out this section.

(8) The victim's address and telephone number maintained by the Department of Correctional Services, the Department of Health and Human Services, the county corrections agency, or the Board of Parole pursuant to subsection (1) of this section shall be exempt from disclosure under public records laws and federal freedom of information laws, as such laws existed on January 1, 2004.

Sec. 86. (1) At least ninety days prior to the release from incarceration or civil commitment or the termination of probation or parole supervision of an individual who is required to register under section 29-4003, the agency with jurisdiction over the individual shall provide notice to the Attorney General, the Nebraska State Patrol, the prosecuting county attorney, and the county attorney in the county in which an individual is incarcerated, supervised, or committed.

(2) The Board of Parole shall also provide notice to the Attorney General, the Nebraska State Patrol, the prosecuting county attorney, and the county attorney in the county in which such individual is incarcerated or committed within five days after scheduling a parole hearing for an individual who is required to register under section 29-4003.

(3) A county attorney shall, no later than forty-five days after receiving notice of the pending release of an individual pursuant to this section, notify the Attorney General whether the county attorney intends to initiate civil commitment proceedings against such individual upon his or her release from custody.

Sec. 87. For purposes of sections 86 to 91 of this act:

(1) Dangerous sex offender means (a) a person who suffers from a mental illness which makes the person likely to engage in repeat acts of sexual violence, who has been convicted of one or more sex offenses, and who is substantially unable to control his or her criminal behavior or (b) a person with a personality disorder which makes the person likely to engage in repeat acts of sexual violence, who has been convicted of two or more sex offenses, and who is substantially unable to control his or her criminal behavior;

(2) Likely to engage in repeat acts of sexual violence means the person's propensity to commit sex offenses resulting in serious harm to others is of such a degree as to pose a menace to the health and safety of the public;

(3) Person who suffers from a mental illness means an individual who has a mental illness as defined in section 71-907;

(4) Person with a personality disorder means an individual diagnosed with a personality disorder;

(5) Sex offense means any of the offenses listed in section 29-4003 for which registration as a sex offender is required; and

(6) Substantially unable to control his or her criminal behavior means having serious difficulty in controlling or resisting the desire or urge to commit sex offenses.

Sec. 88. (1) The Department of Correctional Services shall order an evaluation of the following individuals by a mental health professional to determine whether or not the individual is a dangerous sex offender:

(a) Individuals who have been convicted of (i) sexual assault of a child in the first degree pursuant to section 6 of this act or (ii) sexual assault in the first degree pursuant to section 28-319;

(b) Individuals who have been convicted of two or more offenses requiring registration as a sex offender under section 29-4003 if one of the convictions was for any of the following offenses: (i) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense; (ii) sexual assault in the first degree pursuant to section 28-319 or sexual assault in the second degree pursuant to section 28-320; (iii) sexual assault of a child pursuant to section 28-320.01; (iv) sexual assault of a child in the first degree pursuant to section 6 of this act; (v) sexual assault of a child in the second or third degree pursuant to section 28-320.01; (vi) sexual assault of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386; (vii) incest of a minor pursuant to section 28-703; (viii) visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03; or (ix) any offense that is substantially equivalent to an offense listed in this section by any state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, or by court-martial or other military tribunal, notwithstanding a procedure comparable in effect to that described in section 29-2264 or any other procedure to nullify a conviction other than by pardon;

(c) Individuals convicted of a sex offense against a minor who have refused to participate in or failed to successfully complete the sex offender treatment program offered by the Department of Correctional Services or the Department of Health and Human Services during the term of incarceration. The failure to successfully complete a treatment program due to time constraints or the unavailability of treatment programming shall not constitute a refusal to participate in treatment; and

(d) Individuals convicted of failure to comply with the registration requirements of the Sex Offender Registration Act who have previously been convicted for failure to comply with the registration requirements of the act or a similar registration requirement in another state.

(2) The evaluation required by this section shall be ordered at least one hundred eighty days before the scheduled release of the individual. Upon completion of the evaluation, and not later than one hundred fifty days prior to the scheduled release of the individual, the department shall send written notice to the Attorney General, the county attorney of the county where the offender is incarcerated, and the prosecuting county attorney. The notice shall contain an affidavit of the mental health professional describing his or her findings with respect to whether or not the individual is a dangerous sex offender.

Sec. 89. (1) Any individual who, on or after the effective date of this act, (a) is convicted of or completes a term of incarceration for an offense requiring registration under section 29-4003 and has a previous conviction for a registerable offense, (b) is convicted of sexual assault of a child in the first degree pursuant to section 6 of this act, or (c) is convicted of or completes a term of incarceration for an aggravated offense

as defined in section 29-4005, shall, upon completion of his or her term of incarceration or release from civil commitment, be supervised in the community by the Office of Parole Administration for the remainder of his or her life.

(2) Notice shall be provided to the Office of Parole Administration by an agency or political subdivision which has custody of an individual required to be supervised in the community pursuant to subsection (1) of this section at least sixty days prior to the release of such individual from custody.

(3) Individuals required to be supervised in the community pursuant to subsection (1) of this section shall undergo a risk assessment and evaluation by the Office of Parole Administration to determine the conditions of community supervision to be imposed to best protect the public from the risk that the individual will reoffend.

(4) Conditions of community supervision imposed on an individual by the Office of Parole Administration may include the following:

(a) Drug and alcohol testing if the conviction resulting in the imposition of community supervision involved the use of drugs or alcohol;

(b) Restrictions on employment and leisure activities necessary to minimize interaction with potential victims;

(c) Requirements to report regularly to the individual's community supervision officer;

(d) Requirements to reside at a specified location and notify the individual's community supervision officer of any change in address or employment;

(e) A requirement to allow the Office of Parole Administration access to medical records from the individual's current and former providers of treatment;

(f) A requirement that the individual submit himself or herself to available medical, psychological, psychiatric, or other treatment, including, but not limited to, polygraph examinations; or

(g) Any other conditions designed to minimize the risk of recidivism, including, but not limited to, the use of electronic monitoring, which are not unduly restrictive.

Sec. 90. An individual who violates one or more of the conditions of community supervision established for him or her pursuant to section 89 of this act shall undergo a review by the Office of Parole Administration to evaluate the risk posed to the public by the violation in question. The office may take any of the following actions in response to a violation of conditions of community supervision:

(1) Revise or impose additional conditions of community supervision in order to minimize the risk to the public from the continued presence of the individual in the community;

(2) Forward to the Attorney General or the county attorney in the county where the individual resides a request to initiate a criminal prosecution for failure to comply with the terms of community supervision; or

(3) Forward to the county attorney or Attorney General a recommendation that civil commitment proceedings be instituted with respect to the individual.

Sec. 91. Failure to comply with the conditions of community supervision imposed by the Office of Parole Administration is a Class IV felony for the first offense and a Class III felony for any subsequent offense.

Sec. 92. Section 83-1,100, Reissue Revised Statutes of Nebraska, is amended to read:

83-1,100 There is hereby created within the department the Office of Parole Administration. The office shall consist of the Parole Administrator, the field parole service, and all other office staff. The office shall be responsible for the following:

(1) The administration of parole services in the community;

(2) The maintenance of all records and files associated with the Board of Parole; and

(3) The daily supervision and training of staff members of the office; and -

(4) The assessment, evaluation, and supervision of individuals who are subject to lifetime community supervision pursuant to section 89 of this act.

Nothing in this section shall be construed to prohibit the office from maintaining daily records and files associated with the Board of Pardons.

Sec. 93. Section 83-1,102, Revised Statutes Supplement, 2005, is amended to read:

83-1,102 The Parole Administrator shall:

(1) Supervise and administer the Office of Parole Administration;

(2) Establish and maintain policies, standards, and procedures for the field parole service and the community supervision of sex offenders pursuant to section 89 of this act;

(3) Divide the state into parole districts and appoint district parole officers, deputy parole officers, if required, and such other employees as may be required to carry out adequate parole supervision of all parolees, adequate probation supervision of probationers as ordered by district judges, prescribe their powers and duties, and obtain office quarters for staff in each district as may be necessary;

(4) Cooperate with the Board of Parole, the courts, the Community Corrections Council, and all other agencies, public and private, which are concerned with the treatment or welfare of persons on parole;

(5) Provide the Board of Parole and district judges with any record of a parolee or probationer which it may require;

(6) Make recommendations to the Board of Parole or district judge in cases of violation of the conditions of parole or probation, issue warrants for the arrest of parole or probation violators when so instructed by the board or district judge, notify the Director of Correctional Services of determinations made by the board, and upon instruction of the board, issue certificates of parole and of parole revocation to the facilities and certificates of discharge from parole to parolees;

(7) Organize and conduct training programs for the district parole officers and other employees;

(8) In consultation with the Community Corrections Council, use the funds provided under section 83-1,107.02 to augment operational or personnel costs associated with the development, implementation, and evaluation of enhanced parole-based programs and purchase services to provide such programs aimed at enhancing adult parolee supervision in the community and treatment needs of parolees. Such enhanced parole-based programs include, but are not limited to, specialized units of supervision, related equipment purchases and training, and programs developed by or through the council that address a parolee's vocational, educational, mental health, behavioral, or substance abuse treatment needs;

(9) Ensure that any risk or needs assessment instrument utilized by the system be periodically validated; and

(10) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

Sec. 94. Section 83-1,103, Reissue Revised Statutes of Nebraska, is amended to read:

83-1,103 The field parole service, consisting of district parole officers and deputy parole officers working under the direction of the Parole Administrator or district judge, shall be responsible for the investigation, supervision, and assistance of parolees, ~~or~~ probationers, or individuals subject to community supervision under section 89 of this act. The field parole service shall be sufficient in size to assure that no district parole officer carries a case load larger than is compatible with adequate parole investigation or supervision.

Sec. 95. A parole officer assigned by the administrator to supervise individuals subject to lifetime community supervision pursuant to section 89 of this act shall:

(1) Make investigations, prior to an individual subject to community supervision being released from incarceration, in cooperation with institutional caseworkers at prisons, mental health facilities, and county jails, to determine the community supervision conditions necessary to protect the public and make reasonable advance preparation for release into the community;

(2) Assist individuals subject to community supervision to comply with the conditions of supervision and to make a successful adjustment in the community;

(3) Supervise individuals subject to community supervision by keeping informed of their conduct and condition;

(4) Make reports as required by the administrator to determine the effectiveness of community supervision in protecting the public or the progress of an individual subject to community supervision;

(5) Cooperate with social welfare agencies and treatment providers to ensure that individuals subject to community supervision receive any necessary services or treatment;

(6) Inform the administrator when, in the opinion of the community supervision officer, an individual is in violation of the conditions of his or her community supervision, and whenever necessary exercise the power of arrest as provided in section 83-1,102;

(7) Conduct periodic reviews of the conditions of community

supervision imposed on an individual as required by the administrator; and

(8) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

Sec. 96. (1) Prior to the release from incarceration of an individual subject to lifetime community supervision pursuant to section 89 of this act, the Office of Parole Administration shall:

(a) Notify the individual in writing that he or she is subject to community supervision upon completion of his or her criminal sentence;

(b) Inform the individual subject to community supervision of the process by which conditions of community supervision are determined and his or her right to submit relevant information to the office for consideration when establishing the conditions of supervision;

(c) Determine the individual's risk of recidivism if released into the community, utilizing a validated risk assessment tool;

(d) After considering the information required in subdivision (e) of this subsection, determine the conditions of supervision which will most effectively minimize the risk of the individual committing another sex offense. The conditions shall be the least restrictive conditions available, in terms of the effect on the individual's personal freedom, which minimize the risk of recidivism and are compatible with public safety; and

(e) In determining the conditions of supervision to be imposed, the office shall consider the following:

(i) A report prepared by the institutional caseworkers relating to the individual's personality, social history, and adjustment to authority and including any recommendations which the staff of the facility may make;

(ii) All official reports of the individual's prior criminal record, including reports and records of earlier probation and parole experiences;

(iii) The presentence investigation report;

(iv) The reports of any physical, mental, and psychiatric examinations of the individual;

(v) Any relevant information which may be submitted by the individual, his or her attorney, the victim of the crime, or other persons; and

(vi) Such other relevant information concerning the individual as may be reasonably available.

(2) Upon completion of the risk assessment and the determination of the conditions of community supervision and no later than thirty days prior to the completion of the individual's criminal sentence, the Office of Parole Administration shall issue a certificate of community supervision to the individual containing the conditions of community supervision he or she will be required to comply with upon the completion of his or her criminal sentence. The administrator shall include with the certificate written information on how to appeal the determination of the conditions of community supervision.

Sec. 97. The Office of Parole Administration shall review the conditions of community supervision imposed on an individual pursuant to section 89 of this act on an annual basis and shall provide the individual the opportunity to submit written materials to the office for consideration during such review.

If the office determines, after reviewing the individual's conduct while under supervision and any other relevant facts, that one or more of the conditions of community supervision imposed upon the individual is no longer necessary to reduce the risk of the individual reoffending or is no longer the least restrictive condition compatible with public safety, the office shall revise the conditions of community supervision so that the individual's freedom is not unnecessarily restricted.

Sec. 98. (1) Whenever a determination or revision of the conditions of community supervision is made by the Office of Parole Administration, the individual subject to the conditions shall be entitled to an appeal. The appeal shall be heard by the district court in the county where the individual resides. The individual shall be informed of his or her right to request counsel, and if counsel is requested the court shall determine if the individual is indigent. If the court finds the individual to be indigent, it shall appoint counsel from the public defender's office to represent the individual during the appeal.

(2) In an appeal contesting the determination or revision of the conditions of community supervision, the burden of proof shall be on the individual subject to community supervision to show by clear and convincing evidence (a) that the conditions in question will not reduce the risk of the individual reoffending or otherwise protect the public or (b) that the condition is overly restrictive of the individual's freedom and a less restrictive condition is available which is equally or more effective in

reducing the risk of the individual reoffending.

Sec. 99. Section 83-1,135, Revised Statutes Supplement, 2005, is amended to read:

83-1,135 Sections 83-170 to 83-1,135 and sections 86 to 91 and 95 to 98 of this act shall be known and may be cited as the Nebraska Treatment and Corrections Act.

Sec. 100. Section 83-338, Revised Statutes Cumulative Supplement, 2004, is amended to read:

83-338 If at any time it becomes necessary, for lack of capacity or other cause, to establish priorities for the admission of patients into the state hospitals for the mentally ill, the following priorities for admission shall be recognized: (1) Patients whose care in the state hospital is necessary in order to protect the public health and safety; (2) patients committed by a mental health board under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act or by a district court; (3) patients who are most likely to be benefited by treatment in the state hospitals, regardless of whether such patients are committed by a mental health board or whether such patients seek voluntary admission to one of the state hospitals; and (4) when cases are equally meritorious, in all other respects, patients who are indigent.

Sec. 101. Section 83-351, Revised Statutes Cumulative Supplement, 2004, is amended to read:

83-351 Expenses incurred by one county, on account of a mentally ill and dangerous person or a dangerous sex offender as defined in section 87 of this act whose legal settlement is in another county of the state, shall be refunded, with lawful interest thereon, by the county in which the ~~patient~~ mentally ill and dangerous person or dangerous sex offender has his or her legal settlement. Such expenses shall be presented to the county board of the county sought to be charged, which shall allow and pay them the same as other claims. Whenever a patient of any facility over which the Department of Health and Human Services has control has been adjudicated a mentally ill and dangerous person or a dangerous sex offender as defined in section 87 of this act and committed to a state hospital for the mentally ill, and the expenses of the adjudication and commitment have been paid by the county in which the institution is located, the county clerk of that county shall certify the total amount of the expenses thus incurred to the Department of Health and Human Services. The department shall audit the expenses so certified and shall file a statement of the amount found due with the Director of Administrative Services, and a warrant shall be drawn on the General Fund in favor of the county from which the ~~patient~~ mentally ill and dangerous person or dangerous sex offender was committed.

Sec. 102. Section 83-364, Revised Statutes Cumulative Supplement, 2004, is amended to read:

83-364 When any person is admitted to a state institution or other inpatient treatment facility pursuant to an order of a mental health board under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act or receives treatment prescribed by such institution or facility following release or without being admitted as a resident patient, the patient and his or her relatives shall be liable for the cost of the care, support, maintenance, and treatment of such person to the extent and in the manner provided by sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380. The provisions of such sections also shall apply to persons admitted to a state institution as transferees from any state penal institution or the Youth Rehabilitation and Treatment Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva but only after the expiration of the time for which the transferees were originally sentenced or committed.

Sec. 103. Section 83-376, Revised Statutes Cumulative Supplement, 2004, is amended to read:

83-376 When the full cost determined to be necessary for the care, support, maintenance, and treatment of any patient is not paid by the patient or his or her relatives within thirty days of receipt of such care, (1) the county in which the patient resides shall pay (a) the first fifteen dollars per day of the unpaid cost for each of the first thirty days at the Hastings Regional Center, the Lincoln Regional Center, the Norfolk Regional Center, or other inpatient treatment facility where the patient is receiving inpatient treatment pursuant to an order of a mental health board under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act, (b) the first ten dollars per day of the unpaid cost for each of the first thirty days at the Beatrice State Developmental Center, and (c) the first three dollars per day of the unpaid costs for each day after the first thirty days at any such institution, (2) the balance of the unpaid cost shall be borne by the state, and (3) the county in which the patient resides shall be credited by the

Director of Health and Human Services for amounts collected from such patient or his or her relatives in excess of the portion of such costs borne by the state.

Sec. 104. Section 83-4,143, Revised Statutes Supplement, 2005, is amended to read:

83-4,143 (1) It is the intent of the Legislature that the court target the felony offender (a) who is eligible and by virtue of his or her criminogenic needs is suitable to be sentenced to intensive supervision probation with placement at the incarceration work camp, (b) for whom the court finds that other conditions of a sentence of intensive supervision probation, in and of themselves, are not suitable, and (c) who, without the existence of an incarceration work camp, would, in all likelihood, be sentenced to prison.

(2) When the court is of the opinion that imprisonment is appropriate, but that a brief and intensive period of regimented, structured, and disciplined programming within a secure facility may better serve the interests of society, the court may place an offender in an incarceration work camp for a period not to exceed one hundred eighty days as a condition of a sentence of intensive supervision probation. The court may consider such placement if the offender (a) is a male or female offender convicted of a felony offense in a district court, (b) is medically and mentally fit to participate, with allowances given for reasonable accommodation as determined by medical and mental health professionals, and (c) has not previously been incarcerated for a violent felony crime. Offenders convicted of a crime under sections 28-319 to 28-321 and section 6 of this act or of any capital crime are not eligible to be placed in an incarceration work camp.

Sec. 105. Section 83-933, Revised Statutes Cumulative Supplement, 2004, is amended to read:

83-933 The Office of Parole Administration shall be within the Division of Community-Centered Services. Subject to the supervision of the assistant director of the division, the Parole Administrator shall be charged with the administration of parole services in the community pursuant to the provisions of section 83-1,102, implementation and administration of the Interstate Compact for Adult Offender Supervision as it affects parolees, community supervision of sex offenders pursuant to section 89 of this act, and supervision of parolees either paroled in Nebraska and supervised in another state or paroled in another state and supervised in Nebraska, pursuant to the compact.

Sec. 106. (1) When sentencing a person convicted of an offense which requires lifetime community supervision upon release pursuant to section 89 of this act, the sentencing court shall:

(a) Provide written notice to the defendant that he or she shall be subject to lifetime community supervision by the Office of Parole Administration upon release from incarceration or civil commitment. The written notice shall inform the defendant (i) that he or she shall be subject to lifetime community supervision by the office upon release and that the office shall conduct a risk assessment and evaluation to determine the conditions of community supervision which will minimize, in the least restrictive manner that is compatible with public safety, the risk of the defendant committing additional offenses, (ii) that a violation of any of the conditions of community supervision imposed by the office may result in the revision of existing conditions, the addition of new conditions, a recommendation that civil commitment proceedings should be instituted, or criminal prosecution, and (iii) of his or her right to challenge the determination of the conditions of community supervision by the office and the right to a periodic review of the conditions of community supervision pursuant to section 89 of this act to determine if the conditions are still necessary to protect the public;

(b) Require the defendant to read and sign a form stating that the duty of the defendant to comply with the conditions of community supervision and his or her rights to challenge the conditions of community supervision imposed by the office has been explained; and

(c) Retain a copy of the written notification signed by the defendant.

(2) Prior to the release of a person serving a sentence for an offense requiring lifetime community supervision by the Office of Parole Administration pursuant to section 89 of this act, the Department of Correctional Services, the Department of Health and Human Services, or a city or county correctional or jail facility shall:

(a) Provide written notice to the person that he or she shall be subject to lifetime community supervision by the office upon release from incarceration. The written notice shall inform the person (i) that he or

she shall be subject to lifetime community supervision by the office upon release and that the office shall conduct a risk assessment and evaluation of the defendant to determine the conditions of community supervision which will minimize, in the least restrictive manner that is compatible with public safety, the risk of the person committing additional offenses, (ii) that a violation of any of the conditions of community supervision imposed by the office may result in the revision of existing conditions, the addition of new conditions, a recommendation that civil commitment proceedings should be instituted, or criminal prosecution, and (iii) of his or her right to challenge the determination of the conditions of community supervision by the office and the right to a periodic review of the conditions of community supervision pursuant to section 89 of this act to determine if the conditions are still necessary to protect the public;

(b) Require the defendant to read and sign a form stating that the duty of the defendant to comply with the conditions of community supervision and his or her right to challenge the conditions of community supervision imposed by the office has been explained; and

(c) Retain a copy of the written notification signed by the person.

Sec. 107. In 2001, the Governor's Working Group on the Management and Treatment of Sex Offenders issued its final report making recommendations for legislative and administrative changes in providing services for the management and treatment of sex offenders. It is the intent of the Legislature that those who are responsible for the treatment of sex offenders possess the necessary qualifications and training to provide sex-offender-specific therapy.

Sec. 108. (1) The Director of Regulation and Licensure shall establish a working group to study sex offender treatment and management services and recommend improvements. The working group shall include a member of the Legislature appointed by the Executive Board of the Legislative Council and the following persons appointed by the Governor: A representative of the Nebraska Health and Human Services System; a representative of the courts; a representative of the Department of Correctional Services; a representative of the Nebraska Probation System; a representative of the Board of Parole; a representative of law enforcement; a representative of private providers of sex offender treatment; a representative of victim advocates; a licensed psychologist; a licensed alcohol and drug counselor; and a person required to be registered under the Sex Offender Registration Act who is participating in a sex offender treatment program. Other interested persons may be appointed in a nonvoting capacity as needed.

(2) The working group shall study sex offender treatment and management on the state level to determine future legislative and executive actions necessary to improve sex offender treatment and management within the State of Nebraska based upon the recommendations of the Governor's Working Group on the Management and Treatment of Sex Offenders report issued in August of 2001, with regard to the following:

(a) Credentialing of professionals who provide sex offender assessment or treatment, including psychologists, psychiatrists, licensed mental health professionals, licensed clinical social workers, and medical personnel;

(b) Creating mandated treatment standards for sex-offender-specific treatment as a component of a comprehensive approach to sex offender management; and

(c) Providing increased training opportunities for all professionals involved in the treatment and management of sex offenders.

(3) The Director of Regulation and Licensure, in consultation with the working group, shall submit a report of such study to the Legislature and the Governor on or before December 1, 2006. The working group terminates on December 1, 2006.

Sec. 109. Original sections 28-319, 29-2028, 29-2221, 42-1203, 71-1,206.14, 71-1,206.18, 71-1,206.34, 71-6908, 79-267, 83-1,100, and 83-1,103, Reissue Revised Statutes of Nebraska, sections 28-101, 28-111, 28-311, 28-318, 28-320.01, 28-320.02, 28-707, 29-119, 29-1926, 29-2290, 29-2923, 29-4001, 29-4005, 29-4006, 29-4007, 29-4011, 29-4103, 71-916, 71-917, 71-918, 71-919, 71-942, 71-944, 71-945, 71-946, 71-947, 71-948, 71-949, 71-954, 71-956, 71-957, 71-958, 71-959, 71-960, 71-961, 71-962, 80-601, 81-1850, 83-338, 83-351, 83-364, 83-376, and 83-933, Revised Statutes Cumulative Supplement, 2004, and sections 29-110, 29-4003, 29-4004, 29-4009, 29-4013, 71-1128, 83-1,102, 83-1,135, and 83-4,143, Revised Statutes Supplement, 2005, are repealed.